South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

Vol. 11 May 17, 1994 No. 18

CONTENTS

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House Week in Review

Several controversial issues took up much of the House's time this past week. The House spent much of Tuesday afternoon debating whether to give third reading to S. 920, a bill tightening requirements for land to be taxed as agricultural. Opponents made a last-ditch effort to derail the bill, warning it would lead to large tax increases for many people least able to afford them. A motion to recommit the bill to the House Agriculture, Natural Resources and Environmental Affairs Committee was tabled by a vote of 61 to 44. Also defeated was a motion to recommit the bill to the House Ways and Means Committee. S. 920 subsequently was given third reading.

The issue of property tax relief resurfaced on Tuesday, when an amendment was offered to S. 674 for that purpose. The amendment would have raised the state sales tax from 5 to 7 percent, with the proceeds from this new tax used to eliminate school property taxes. The amendment also would have removed the $300 sales tax cap on the sale and lease of motor vehicles, instead imposing a 3 percent tax on those sales and leases, and would have removed approximately two-thirds of the state's 47 sales tax exemptions (including, among others, the sales tax exemption on newspapers, fuel sold to manufacturers and electric power companies for various purposes, heating material used for residential purposes, and supplies sold to radio and television stations). The amendment, however, was ruled out of order by the Speaker. (A related but somewhat different bill to provide property tax relief, H. 5085, is still pending in the House Ways and Means Committee.)

Following approval of S. 920 late Tuesday afternoon, the House by special order then took up S. 88, a bill to regulate abortion clinics. An amendment was proposed to S. 88 which would include the "Woman's Right to Know" bill (H. 3267), requiring information be offered to women seeking abortions and also requiring a waiting period before the procedure is performed. (H. 3267 was passed by the House in early March of this year and subsequently sent to the Senate, but the bill has remain stalled in the Senate Medical Affairs Committee.) The amendment was easily adopted. Numerous amendments offered to the bill to eliminate completely the waiting period, suspend it in emergency situations, or otherwise amend it were tabled. The bill received second reading by the House that day and a perfunctory third reading the following morning.

Legislative Update, May 17, 1994

On Thursday afternoon, by special order, the House took up the ever-volatile issue of reapportionment. This was in response to the Justice Department's ruling on Monday, May 2, which had rejected the House's plan (H. 4333) to redraw the boundaries of the 124 districts of the House of Representatives, with the Department citing that the House plan allegedly was more interested in protecting incumbents than in expanding the number of minority districts. (H. 4333 called for the creation of 27 majority-black districts, of which 21 also had a majority black voting age population---i.e., a majority of the district's residents age 18 or older were black.) Following a long afternoon of debates and amendments, the House voted that evening by a vote of 88 to 22 to give the bill second reading. The bill adds a number of majority-black House districts and places several incumbents in the same districts. Following adoption of technical amendments, the bill was given third reading on Monday afternoon, May 16, by a vote of 85 to 19. Action on reapportionment was deemed urgent in that filing for offices for this year's elections begins in only 2 weeks, on Wednesday, June 1 (and continues through Wednesday, June 15, with the state primary held on August 9 and the runoff on August 23.) Because of the complexity of sorting through the many amendments to the bill and making technical changes, demographic information pertaining to the House districts (i.e., total population, racial composition), along with maps of the new districts, was not available at press time but is expected to be available within the next few days. Next week's Update will include more information on these new districts.

The General Assembly convened in joint session Wednesday afternoon to elect justices and judges to the state's various courts. The General Assembly elected Associate Justice Ernest Finney, Jr. of the State Supreme Court as that court's Chief Justice. He will assume the post of chief justice at the end of 1994, when then Chief Justice Chandler retires. (The current Chief Justice, David Harwell, will retire this summer, to be replaced by Chief Justice Chandler, who in turn will step down this December upon reaching the court's mandatory retirement age of 72, at which time Justice Finney will become chief justice.) The General Assembly then proceeded to elect John Waller as an Associate Justice of the Supreme Court, filling the position to be vacated by Associate Justice Finney upon the latter's assumption of the post of Chief Justice. Mr. Waller currently serves as a Circuit Court judge in the 12th Circuit (Florence and Marion Counties). Following the filling of these Supreme Court positions, the General Assembly then elected Donna Strom to Seat 4 of the Family Court in the 5th Judicial Circuit (Kershaw and Richland Counties) and Jane Fender to Seat 2 of the Family Court in the 14th Judicial Circuit (Allendale, Beaufort, Colleton, Hampton and Jasper Counties).

Bills Introduced

The following bills were introduced in the House last week. Not all bills introduced in the House are featured here. The bill summaries are arranged according to the committee to which the legislation was referred.

Judiciary

Separation as Pertains to Grounds for Divorce May Mean Voluntary or Involuntary Separation (S. 1288, Sen. McConnell). For purposes of grounds for divorce, this bill provides that separation in which a husband and wife have lived separate and apart without cohabitation for one year may mean voluntary or involuntary separation.

Ways and Means

Sales Tax Exemption for Gasoline and Motor Fuels Used by Buses in the Head Start Program (S. 1134, Sen. G. Smith). This bill provides a sales tax exemption for gasoline and motor fuels sold to buses used in the Head Start program.

Allocation of Revenues from Payment in Lieu of Taxes (S. 1284, Sen. Hayes). This bill requires any county, municipality or special purpose district receiving and retaining revenues from payments in lieu of taxes, in which these revenues are derived in whole or part from a redevelopment project area, to allocate these revenues in accordance with an ordinance of the municipality, as if the revenues remained ad valorem taxes. Taxes collected in the redevelopment area which are not subject to that ordinance become payments in lieu of taxes, and the portion collected by the municipality may be pledged to secure special source revenue bonds issued by the municipality.

With only two weeks remaining in the 1994 legislative session, the Update continues its look at legislation passed by or pending before the General Assembly. For convenience, legislation is divided into four categories: (1) legislation passed by the General Assembly; (2) legislation passed by the House; (3) legislation pending before the House; and (4) legislation still in House committees.

(1) List of Legislation Passed by General Assembly (as of Monday, May 16)

Listed below are summaries of some acts which either have been enrolled for ratification, ratified or signed into law.

Spousal Sexual Battery (H. 3033, Rep. Cobb-Hunter). This act prohibits evidence of a victim's prior sexual conduct from being admissible in prosecutions of spousal sexual battery, although evidence of the victim's sexual conduct with the defendant or evidence of instances of sexual activity with persons other than the defendant introduced to show source or origin of semen, pregnancy or disease about which evidence has been introduced previously at trial is admissible if (1) the judge finds such evidence is relevant to a material fact and issue in the case and (2) that its inflammatory or prejudicial nature does not outweigh its probative value. The act also changes the definition of "aggravated force," as pertains to sexual battery, to include the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature.

Status: Signed into law on March 1, 1994.

Deletion of Mandatory Retirement for Highway Patrol (H. 3333, Rep. Boan). This act deletes a provision requiring law enforcement officers of the State Highway Patrol to retire at age 62.

Status: Signed into law on March 16, 1994.

Municipalities May Appoint Code Enforcement Officers (H. 3416, Rep. Gonzales). This act allows a municipality to appoint and commission as many code officers as may be necessary for the security, general welfare and convenience of the municipality. These officers are vested with all

the powers and duties conferred by law upon constables, in addition to duties imposed on them by the municipality's governing body; however, code enforcement officers commissioned under these provisions may not perform a custodial arrest. The code enforcement officers must exercise their powers on all property, whether public or private, within the municipality.

Status: Signed into law on April 20, 1994.

School Administrators and Officials May Conduct Searches on School Property without Probable Cause (H. 3442, Rep. Cromer). This bill allows school principals or their designees to conduct "reasonable" searches on school property of lockers, desks, vehicles and personal belongings with or without probable cause. Principals or their designees also may conduct reasonable searches of visitors and their property while on school property; however, no school administrator or official may conduct a strip search. Searches conducted pursuant to these provisions must comply fully with the "reasonableness standard" as set forth in a 1985 federal court case (New Jersey v. T.L.O., 469 U.S. 328). Notice concerning these searches must be prominently posted on school property, with the costs of posting these notices paid by the State. Failure to post notice, however, is not a defense in any civil action or criminal prosecution and is not grounds for any legal liability.

Status: Signed into law on May 3, 1994.

Schools to Report Criminal Conduct (H. 3550, Rep. McMahand). This act requires school administrators to contact law enforcement officials as soon as they discover that a person is engaging in or has engaged in an activity that may result in injury or serious threat of injury to the person or to another person or to his property. This activity is to be reported whether it occurs on school property or at a school-sanctioned or sponsored event. The activities to be reported would be defined in local school board policy.

Status: Signed into law on March 1, 1994.

Jobs Income Tax Credit (H. 3601, Rep. Spearman). This act expands the jobs tax credit so as to include as "least developed" any county with a population of less than 20,000. Previously, only the 16 counties in this state with the average ranking of the highest unemployment rate and lowest per capita income figures were considered as least developed and qualified for job tax credits of $1,000, with other counties classified as either "moderately developed" or "developed" and carrying job tax credits, respectively, of $600 and $300.

Status: Signed into law on March 1, 1994.

Construction Worker Performing Construction Services Pursuant to Contracts Awarded Under Procurement Code Prohibited from Performing Other Work on that Project as a Contractor or Subcontractor (H. 3667, Rep. Harrison). This act prohibits a construction manager performing construction management services pursuant to a contract awarded under the South Carolina Consolidated Procurement Code from performing other work on that project as a contractor or subcontractor either directly or through a business in which he or his construction management firm has greater than a five percent interest. For purposes of this act, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed by a contractor or subcontractor. The act also provides that if the construction manager performs or is responsible for safety compliance and other incidental construction support activities, and if these support activities do not comply with health and safety regulations promulgated by the Commissioner of Labor, then the construction management firm is subject to all applicable fines and penalties.

Status: Signed into law on April 20, 1994.

Physical Fitness Contracts (H. 3835, Rep. Fair). This act requires prepaid or credit contracts for physical fitness service contracts to meet certain statutory requirements (e.g., contract must be in writing, contract must state location of center, etc.) of the State's Physical Fitness Services Act if the contract is over 3 months in duration or over $200 in amount. Previously, these contracts had to meet such statutory requirements if the contract was over one month in duration or over $50 in amount. The act also provides that services (e.g., daily visitor fees, personal fitness testing) which are not subject to being refunded must be clearly stated in the contract and that no contract is required for personal training, private consultations and fitness testing rendered on an hourly basis unless part of a package exceeding $300. Additionally, the act increases from $25,000 to $50,000 the maximum amount of surety bond a center is required to maintain when entering into contracts of this duration (over 3 months or over $200).

Status: Signed into law on March 16, 1994.

Provision of Mutual Aid by Emergency Entities (H. 3857, Rep. Harvin). This act allows an emergency service entity (e.g., municipality, fire district, fire protection agency) to provide mutual aid assistance when requested by another emergency service delivery system in South Carolina at the time of a disaster such as a flood, hurricane, hazardous material event, etc. The chief or highest-ranking officer, with approval and consent of the governing body, may provide this assistance while acting in accordance with the policies, ordinances and procedures set forth by the governing body of the providing government entity. Each

emergency service entity requesting mutual aid assistance from another emergency service delivery system must utilize an incident commander and the Incident Commander System at all emergency incidents. Additionally, when providing mutual aid, each emergency service entity must be properly trained and equipped and is subject to all provisions of federal, state or local laws governing the location of the incident.

Status: Signed into law on March 24, 1994.

Property Tax Exemption for Property of Nonprofit Housing Used to House Certain Persons (H. 3922, Rep. Sheheen). This act provides a property tax exemption for all property of nonprofit housing corporations devoted exclusively to providing (1) below-cost housing for the aged and/or handicapped persons; (2) below-cost supporting housing for elderly persons or households; or (3) below-cost supportive housing for persons with disabilities, as authorized pursuant to certain federal housing laws.

Status: Signed into law on March 1, 1994.

Criminal Process May Be Served on Sunday for All Crimes (H. 3973, Rep. Stuart). This act allows the criminal process to be served on Sundays for all crimes, including felonies and misdemeanors. Previously, the criminal process could be served on that day only for felonies and certain other crimes such as violations of the law pertaining to gambling or intoxicating liquors.

Status: Signed into law on April 20, 1994.

Sales Tax Exemption for Tangible Personal Property Sold to Certain Charitable Hospitals (H. 3984, Rep. McAbee). This act provides a sales tax exemption for tangible personal property sold to hospitals predominantly serving children, provided that the hospital also is exempt from property taxation and provides care without charge to the patient.

Status: Signed into law on March 2, 1994.

Tolls Administered on a Project May Be Used Only for that Project (H. 4111, Rep. Harrell). This act requires any toll administered on a project by the Department of Transportation to be used to pay for the construction, maintenance costs and other expenses for that project only.

Status: Signed into law on March 16, 1994.

Reapportionment of Congressional Districts (H. 4332, Rep. Sheheen). This act redraws the boundaries of South Carolina's six congressional

districts, based on official 1990 U.S. Census population figures. This plan is virtually identical to the congressional redistricting plan adopted by a three-judge federal panel in 1992 and used in that year's primary and general elections. The only differences between H. 4332 and the 1992 congressional plan is that H. 4332 switches a few precincts between the 2nd and 3rd congressional districts in Aiken County and also switches a few precincts between the 1st and 6th congressional districts in Charleston County.

Status: Became law without signature of governor on March 23, 1994. (NOTE: This congressional redistricting plan was approved by the U.S. Justice Department on Thursday, April 28, so this plan will be in effect for this year's elections and through the year 2000.)

Reverse Mortgage Act (H. 4351, Rep. P. Harris). This act is intended to help elderly homeowners meet their financial needs by accessing the equity in their homes through a reverse mortgage. A "reverse mortgage" is a non-recourse loan secured by real property which (1) provides cash advances to a borrower based on the equity in a borrower's owner-occupied principal residency; (2) requires no payment of principal or interest until the entire loan becomes due and payable; and (3) is made by a lender authorized to engage in business as a bank, savings institution or credit union under state law or federal laws, or any other lenders authorized to make reverse mortgage loans.

The act lists rules governing these mortgages and exempts these mortgages from certain provisions which apply to other mortgages. Reverse mortgage loan payments made to a borrower must be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs (medical assistance, property tax relief, etc.) of aid to individuals. The act prohibits a lender from making a reverse mortgage commitment unless the loan applicant in writing acknowledges receiving from the lender at the time of initial inquiry a statement regarding the advisability and availability of independent information and counseling services on reverse mortgages. The Division of Aging of the Governor's Office is required to provide independent consumer information on reverse mortgages and their alternatives.

Status: Signed into law on May 3, 1994.

Employees of County Councils on Aging Eligible for Coverage Under State Health and Dental Insurance Plans (H. 4368, Rep. P. Harris). This act extends eligibility for coverage under the State's health and dental insurance plans to employees, retirees and their eligible dependents of county councils on aging or other government agencies providing aging services funded by the Governor's Office Division on Aging.

Status: Signed into law on March 16, 1994.

Alternative Means of Regulating Local Exchange Telephone Utilities (H. 4532, Rep. Hodges). This act provides that in fixing rates and charges for a local exchange telephone utility (hereafter called "utility"), the Public Service Commission, per its own motion or per the request of the utility, may consider in lieu of procedures currently outlined under State law (Title 58, Chapter 9, Code of Laws) an alternative means of regulating that utility. If the Commission determines that the utility is subject to competition with respect to its services, the Commission may implement regulatory alternatives such as equitable sharing of earnings between a utility and its customers.

The Commission must review and may authorize implementation of an alternative regulatory plan if it finds that the plan, among other things, does not jeopardize the availability of reasonably affordable and reliable telecommunications services; includes effective safeguards to assure that rates for noncompetitive services do not subsidize the prices charged for competitive services; and does not jeopardize the ability of the utility to provide quality, affordable telecommunications service.

On its own motion or the motion of an interested party, the Commission may review any decision adopting an alternative method of regulation for a utility, and after notice and opportunity to be heard and upon a showing of substantial evidence, the Commission may impose regulatory standards consistent with provisions of state law.

Status: Signed into law on April 20, 1994.

1994 State Primary Date Moved to August (H. 4535, Rep. Sheheen). This joint resolution moves the date of the state primary for 1994 only to August. Normally the state primary is held the second Tuesday in June, but because of ongoing delays in resolving reapportionment, this year the primary will be held on August 9, with the runoff on August 23. Filing for office also has been delayed to the first two weeks in June. (A bill to make the primary date change to August permanent, H. 3147, passed the House in 1993 and is still pending in the Senate Judiciary Committee.)

Status: Signed into law on March 2, 1994.

Group Health Insurance Policies Must Include Offer of Coverage for Psychiatric Conditions (S. 25, Sen. Bryan). This act requires any group health insurance policy offered for sale in South Carolina to include an offer of optional coverage for psychiatric conditions. As pertains to this optional coverage, "Psychiatric coverage" means mental and nervous conditions, drug and substance addiction or abuse, alcoholism or other conditions defined, described or classified as psychiatric disorders or

conditions in the American Psychiatric Association's most current publication of "The Diagnostic and Statistical Manual of Mental Disorders."

This offer of coverage may contain provisions which describe different benefits for psychiatric conditions and physical conditions with respect to any deductible amount, coinsurance provision or contract term affecting benefit determinations, based on use or nonuse of preferred providers. An offer of such optional coverage must provide minimum benefits for psychiatric conditions of at least $2,000 for each member for each benefit year, with a lifetime maximum benefit of $10,000. However, an insurer may issue or continue to issue a health insurance policy which provides greater benefits than these minimum requirements or which generally are more favorable to the insured than these minimum requirements.

Status: Signed into law on May 10, 1994.

Civil Cause of Action for Shoplifting (S. 32, Sen. Wilson). This act creates a civil cause of action against shoplifters. Under these provision, an adult or "emancipated minor" (i.e., person over age 16 at the time of the alleged shoplifting and who was no longer a dependent of or in custody of a parent or legal guardian) who commits shoplifting is civilly liable to the operator of an establishment in an amount consisting of the retail price of the merchandise, if not recovered in merchantable condition up to an amount not exceeding $1,500, plus a penalty not exceeding the greater of three times the retail price of the merchandise or $150; but in no case may the penalty exceed $500. Furthermore, custodial parents or legal guardians of an unemancipated minor who knew or should have known of the minor's propensity to steal are civilly liable for the minor committing shoplifting in the same amount as provided for shoplifting committed by an adult or emancipated minor. A conviction or plea of guilty for committing shoplifting is not a prerequisite to bringing of a civil suit, obtaining a judgment or collecting that judgment under these provisions. Additionally, the fact that a store operator may bring this action against an individual does not limit the operator's right to demand that the person liable for damages and penalties under these provisions remit the damages and penalties before commencement of a legal action. These provisions do not prohibit or limit any other cause of action a store operator may have against a person who steals merchandise from a store or establishment.

In bringing this action, the court must consider mitigating circumstances which bear directly upon the actions of the custodial parent or legal guardian in supervising the unemancipated minor who committed the shoplifting. Testimony or statements of the defendant or his unemancipated minor child or any evidence derived from an attempt to reach a civil settlement or from a civil proceeding under these provisions is inadmissible in any other court proceeding relating to the shoplifting. A

store bringing a civil action under these provisions is prohibited from subsequently filing criminal charges for shoplifting against the individual.

Status: Ratified on May 12, 1994.

Hazing Prohibited at State Institutions of Higher Learning (S. 130, Sen. Rose). This act prohibits hazing at all state-supported universities, colleges and public institutions of higher learning. Under these provisions, hazing is defined as the wrongful striking, threat of violence, etc., by a "superior student" (i.e., a student who has attended a public institution of higher learning longer than another student or who has an official position giving authority over another student) to another student with intent to punish or injure that student or other unauthorized treatment of a tyrannical, insulting or humiliating nature. A student may be dismissed, expelled, suspended or punished by the institution's president if an investigation reveals substantial evidence that a student has committed hazing.

These provisions do not replace but instead supplement current provisions (Section 16-3-510 of the Code of Laws) which prohibit hazing for purposes of initiation or admission into or affiliation with a chartered student, fraternal or sororal organization operating in connection with a school, college or university (punishable upon conviction by a fine not exceeding $500 and/or imprisonment not exceeding 1 year).

Status: Signed into law on April 20, 1994.

Smoking Prohibited in Licensed Child Day Care Facilities (S. 435, Sen. Jackson). This act prohibits smoking in licensed child day care facilities (i.e., a facility which provides care, supervision or guidance for any child who is not related by blood, marriage or adoption to the owner or operator of that facility, whether or not the facility is operated for profit and whether or not the facility makes a charge for its services).

Status: Signed into law on March 1, 1994.

General Assembly May Provide Age and Qualification Requirements for Coroners (S. 488, Sen. Rose). This is a proposed constitutional amendment permitting the General Assembly to set by law the age and qualifications of coroners. This constitutional amendment will be on the ballot in this November's election.

Status: Ratified on February 24, 1994.

Training and Other Requirements for Coroners (S. 487, Sen. Rose). This bill sets training and other requirements a person must meet in order to serve as a coroner. Under these provisions, a coroner must (1) be an American citizen; (2) be a resident of the county where he seeks this post at least 1 year before qualification for election to the post; (3) be a registered voter; (4) be at least age 21 prior to qualifying for election to that post; (5) hold a high school diploma or its equivalent; and (6) have not been convicted of a felony or offense involving moral turpitude. Any coroner serving in office at the time these provisions become effective is exempt from this act's age and high school education requirements. Furthermore, each coroner during his first term must complete a basic training session, to be determined by the South Carolina Law Enforcement Training Council (hereafter called "council"); however, the coroner need not repeat this session if he has completed the session prior to his election or appointment. A coroner or deputy coroner elected, appointed or employed prior to 1994 and serving continuously since that time must attend annually a minimum of 16 hours training, as may be selected by the council, on or before December 31, 1995; each year thereafter, all coroners and deputy coroners must complete a minimum of 16 hours training annually as may be selected by the council.

The annual in-service requirements may be waived by the Board of Directors of the South Carolina Coroners' Association if the coroner presents evidence that he could not complete the required training because of emergency or extenuating circumstances. A coroner not meeting these in-service requirements may be suspended from office without pay by the governor for 90 days, with the suspension continuing until the requirements are met. During the suspension, the governor must appoint a qualified person to perform as acting coroner.

The act also requires the council to appoint a Coroners Training Advisory Committee, which will assist in determining training requirements for coroners and deputy coroners. This committee will consist of at least five coroners and at least one physician trained in forensic pathology as recommended by the South Carolina Coroners Association.

Status: Signed into law on March 16, 1994. (Note: Implementation of this act is contingent on voter approval of S. 488, a constitutional amendment authorizing the General Assembly to set age and qualification requirements for coroners.)

Definition of Litter Expanded to Include Cigarettes and Cigarette Filters (S. 532, Sen. Wilson). This act expands the definition of litter, as pertains to litter offenses, to include cigarettes and cigarette filters.

Status: Signed into law on March 2, 1994.

Small Employer Health Insurance Availability Act (S. 541, Sen. Saleeby). This act is designed to promote greater availability of health insurance for small businesses. Under these provisions, any insurer writing small group health insurance in South Carolina must provide coverage to any small group desiring it, regardless of the health status of its employees or their claims experience. Every insurer must offer at least two health insurance plans---a basic plan and a standard plan---with an advisory committee appointed by the governor recommending the form and level of coverages that would be made available from insurers under the basic and standard plans.

The act also establishes the South Carolina Small Employer Insurer Reinsurance Program, a voluntary reinsurance mechanism allowing insurers to reinsure those risks which, although they may not desire to do, must nonetheless write. The act expands from 25 to 50 the number of employees a business may employ to be considered a "small business", allowing the benefits of small group insurance reform to be extended to as many small businesses as possible. A common group of small employers may be formed solely for the purpose of obtaining insurance, provided that the group contains at least 1,000 eligible employees and meet other requirements. Furthermore, the act establishes a Committee on Health Reform, appointed by the governor, which will issue by next January a report on the feasibility of establishing small employer medical IRA's, accountable health plans, voluntary insurance purchase cooperatives and rating methodologies.

Status: Signed into law on April 19, 1994.

Municipal Property Tax Exemptions for New Corporate Headquarters and Certain Facilities of New Enterprises (S. 605, Sen. Hayes). This is a proposed constitutional amendment to allow a municipal governing body, by ordinance, to exempt from municipal property taxes for not more than five years (1) all new corporate headquarters, corporate office facilities, distribution facilities located in the municipality and additions to those facilities, and (2) all facilities of new enterprises engaged in research and development activities located in the municipality and additions to those facilities. These exemptions would be subject to those terms and conditions that the General Assembly may provide by law. This proposed constitutional amendment will be on the ballot in this November's general election.

Status: Ratified on May 4, 1994.

Creation of Alzheimer's Disease and Related Disorders Resource Coordination Center (S. 926, Sen. Giese). This act creates the Alzheimer's Disease and Related Disorders Coordination Center in the Division of Aging of the Governor's Office. The purpose of this center is to provide statewide coordination, service system development, information and

referral, and caregiver support services to individuals with Alzheimer's disease and related disorders, their families, and caregivers. Among the duties of the Center are facilitating the coordination and integration of Alzheimer's research, program development, planning and quality assurance, and recommending public policy concerning the disease and related disorders to the General Assembly.

The act also requires the coordination center to be supported by an advisory council appointed by the governor. The council must include representatives of four universities (Clemson, University of South Carolina, the Medical University and South Carolina State), various state government departments, Alzheimer's Association chapters and a number of other health and social service organizations. Members of this advisory council are not entitled to mileage, per diem, subsistence or any other form of compensation.

Status: Signed into law on April 20, 1994.

Preservation of Unidentified Bodies (S. 968, Sen. Jackson). This act requires an unidentified body to be forwarded by a coroner to the Medical University of South Carolina or other suitable facility, where the body must be preserved for at least 30 days unless identified within that time. After 30 days, the Medical University may retain possession of the body for its use or return the body to the coroner of the county where the death occurred for disposition as provided by law. Any other facility used by the coroner for storage of the body may dispose of the body as provided by law or return the body to the coroner of the county where death occurred for disposition. Responsibility for transporting the body to and from the Medical University lies with the county, but the Medical University must absorb the cost of preserving the unidentified body for at least 30 days.

Status: Signed into law on April 20, 1994.

Alternative Regulation of Interexchange Telecommunication Carriers (S. 1220, Sen. Stilwell). This act allows the Public Service Commission, on the request of an interexchange telecommunication carrier (i.e., a telephone utility providing toll services) or on the Commission's own motion, to consider in lieu of current provisions for regulating carriers (as outlined in Title 58, Chapter 9, Code of Laws) an alternative means of regulating the carrier. If after notice and hearing the Commission determines that the substantial record of evidence shows that a particular service is competitive in a relevant geographic market, then the Commission may implement regulatory alternatives, as listed under those provisions.

If the Commission determines that a carrier service is competitive, then it (the Commission) would not fix or prescribe the rates, tolls,

charges or rate structures for that service. The act lists factors the Commission must consider in determining whether a service is competitive and requires the carriers to file and maintain price lists for competitive telecommunications services. The Commission may reclassify a telecommunications service provided by a carrier as noncompetitive if after notice and hearing the substantial evidence of record shows that sufficient competition does not exist for the service. In regulating a carrier service found to be noncompetitive, the Commission may implement other regulatory alternatives such as price caps.

This act does not limit the Commission's authority, as pertains to reporting requirements of carriers, to set standards for, among other things, quality of service, complaints and installation of interexchange service.

Status: Signed into law on April 20, 1994.

Volunteer Licenses May Be Issued to Chiropractors Who Provide Care to Needy and Indigent (S. 1222, Senate Labor, Commerce and Industry Committee). This act allows the South Carolina Board of Chiropractic Examiners to issue a special volunteer license for chiropractors wishing to devote their expertise exclusively to providing chiropractic care to South Carolina's needy and indigent. The board will waive all application fees, examination fees and annual registration fees for any chiropractor who has been issued this volunteer license.

Status: Signed into law on April 20, 1994.

Minimum Property Acreage Requirements to Qualify for Assessment as Agricultural Property (S. 920, Sen. Leventis). This act specifies minimum acreage and income requirements for land for purposes of being taxed as agricultural property, as follows:

(a) Tract of land used to grow timber (for commercial purposes): Must be at least 5 acres to qualify for this tax break; however, timberland tracts less than 5 acres contiguous to or under the same management system as another timberland tract meeting this 5 acre requirement are treated as part of the qualifying tract, and timberland tracts under 5 acres qualify for this tax break when owned in combination with other tracts of nontimberland agricultural property that qualify for the tax break. A tract meeting the 5 acre requirement used to grow Christmas trees is considered timberland.

(b) Tract of land not used to grow timber: Must be at least 10 acres to qualify for this tax break; however, nontimberland tracts under that acreage contiguous to other such tracts when, added together, meet the 10 acre requirement are treated as a qualifying tract.

The act also lists exceptions to these acreage requirements, as follows:

(1) A nontimberland tract not meeting the 10 acre requirement nonetheless qualifies for the tax break if the owner earned at least $1,000 in gross farm income for at least three of the five taxable years preceding application for this tax break. (A new owner who fails to meet this income requirement, however, in the five year period is disqualified from the tax break and is subject to the agricultural rollback tax.)

(2) A nontimberland tract not meeting the acreage or income requirements nonetheless qualifies for the tax break if the current owner or an immediate family member has owned the property for at least the 10 years ending January 1, 1994 and the property is classified as agricultural for property tax year 1994. The property continues to qualify for the tax break until the property is applied to another use or is transferred to other than an immediate family member, whichever comes first.

Property initially classified as agricultural which becomes ineligible for that classification because of this act is not subject to the rollback tax.

Status: Enrolled for Ratification

(2) Legislation Passed by the House (as of Monday, May 16)

Listed below is legislation passed by the House but which is still pending in the Senate, either on its calendar or in committee, or House-passed legislation of which a differing version has been passed by the Senate.

Informed Consent for Abortion (H. 3267, Rep. Corning). This bill requires women seeking abortions to be offered or provided certain information about the procedure and alternatives to abortion before this act may be performed. Under these provisions, except in a medical emergency, an abortion cannot be performed until the woman has been informed by the doctor performing the abortion or other health professional of the procedure involved and the probable gestational age of the embryo or fetus at the time the abortion is to be performed. Additionally, the woman must be offered the right to review materials printed by the Department of Health and Environmental Control (DHEC) which inform the woman about abortion procedures and their risks, materials informing the woman of characteristics of the embryo or fetus at 2-week intervals; alternatives to abortion; agencies which provide prenatal care, childbirth and neo-natal care benefits; and mechanisms for obtaining child support. Once a woman has acknowledged receiving these materials, she must wait 2 hours before obtaining an abortion; however, the 2-hour waiting period is not required if the woman acknowledges receiving these materials by mail or picking up the materials at a local health clinic at least 24 hours before the abortion is scheduled to be performed. Acknowledgement of reception of these materials is not required if the abortion is performed pursuant to a court order or if the woman is mentally retarded. If the abortion is to be performed on a minor, then the information must be furnished to the parents, who then must acknowledge receiving these materials before the abortion can be performed. These provisions requiring clinics and other places where abortions are performed to provide this information are suspended if, through no fault of their own, the information is unavailable.

Performance of an abortion without complying with these provisions is a misdemeanor, punishable by a fine of between $1,000 and $5,000, with a second or subsequent conviction resulting in imprisonment of between one and five years and a fine of $1,000-$5,000, no part of which may be suspended. The bill also lists provisions governing the disclosure of the name of a woman bringing an action under this bill and prohibits the Department of Highways and Public Transportation from releasing

information about ownership of a motor vehicle licensed and registered in South Carolina within 48 hours of the request, unless the information is needed for emergency purposes.

Status: Passed the House on March 1; Currently in the Senate Medical Affairs Committee.

Repeal of Mandatory Vehicle Safety Inspections (H. 3281, Rep. Spearman). If this bill is adopted, motor vehicles no longer would be required to undergo yearly safety inspections, as currently is required in South Carolina. If approved, these provisions would be effective upon approval by the governor. (Note: A permanent proviso in the House-passed version of the 1994-1995 general appropriation act---i.e., "state budget"---also repeals mandatory vehicle safety inspections, effective June 30, 1995.)

Status: Passed the House on January 18; Currently pending on the Senate Statewide Second Reading Calendar.

Drug Testing for Prospective State Employees (H. 3491, Rep. Neilson). This bill allows, but does not require, state agencies and departments (hereafter called "employer") to test prospective employees for drugs, when the prospective employee is offered a position before the final hiring selection is made. Written notice that a prospective employee may be subject to drug testing must be given to the prospective employee at the time of application. The employer must pay all costs of initial testing for drugs, but the prospective employee must pay the costs for any confirmation testing or retesting that he (the employee) may desire. If a confirmation test results also is positive, then overall testing may be considered positive by the employer, but if the results are negative, the test results then are invalid and another sample must be conducted if desired by the employee. The bill lists requirements for collection of samples and for performance of testing and provides that an employer may use a positive drug test or the prospective employee's refusal to submit to testing as grounds for refusing to hire the prospective employee.

The bill lists conditions under which an employer may and may not be sued in using a drug testing program. As examples, the employer may not be sued for failure to test for drugs or termination of a drug testing program, but may be sued for an action he takes against an employee based on a false test result or for unauthorized disclosure of test results. Also included in the bill is a confidentiality provision, exempting from disclosure interviews, test results, etc. received by the employer through his drug testing, except for a proceeding related to an action taken by an employer under these provisions.

Status: Approved by the House on April 29; Currently pending in the Senate Judiciary Committee.

Reapportionment of State House Districts (H. 4333, Rep. Sheheen, and H. 4349, Rep. Wilkins).

Background (1990-1992)

Every 10 years, following the decennial Census, states are required to reapportion their congressional, state legislative and local governing body seats (e.g., county council, county commission, etc.). The 1990 U.S. Census revealed that South Carolina had a population of 3,486,703, which, when divided by the 124 seats of the South Carolina House of Representatives, meant that each state House district during this decade should have a population of approximately 28,118.

In the spring of 1991, the General Assembly began its efforts to draw plans for congressional, State House and State Senate districts for the 1992 elections. Shortly thereafter, a lawsuit was filed to require the federal courts to reapportion the districts. The case continued into the winter of 1992, at which time the General Assembly passed and ratified new plans for the House and Senate, but these plans were vetoed by the governor, with the vetoes sustained. The House and Senate passed different versions of a Congressional plan, and a conference committee had insufficient time to work out the differences between the two plans before a three-judge federal panel resumed hearing the cases. Following a brief trial, the federal panel in the spring of 1992 issued an order establishing reapportionment plans for Congressional, House and Senate districts for the 1992 elections. Because the plans were drawn by federal judges, they (the plans) were not required to be approved by the Justice Department. These plans thus were used for the August 1992 state primary and the November 1992 general election.

Reapportionment in 1993

The court order establishing these plans, however, was not the final word in the state's reapportionment debate. The order, with its plans, was appealed back to the U.S. Supreme Court. Opponents of the court-ordered plan claimed that it (the plan) did not create enough majority-black seats in the General Assembly. The U.S. Supreme Court, in turn, sent the lawsuit back to the three-judge panel for further consideration. Last July, the federal panel issued an order deferring further action until April 1, 1994. The order stated that as of that time, no districts existed for the House, Senate or Congressional districts, since the previous order had been vacated by the U.S. Supreme Court. The order also encouraged the General Assembly to adopt reapportionment plans by the April 1 deadline for the House and for Congress by the April 1 deadline or else face judicial intervention again. (Because the Senate is not up for re-election again until 1996, the urgency for enactment of a Senate plan is not as great.) The court made it clear that it deemed redistricting as a state legislative matter and one for the federal courts to intervene in only as a last resort to ensure timely elections.

General Assembly's Efforts to Reapportion Districts in 1994

On the first day of the 1994 session, three reapportionment bills were introduced in the House. The Speaker introduced H. 4332 and H. 4333, while the Speaker Pro Tem introduced H. 4349. H. 4332 was a plan to reapportion the state's congressional districts, while H. 4333 and H. 4349 were plans to reapportion the districts of the State House. Congressional redistricting proved to be a relatively uncontroversial affair; the House used the 1992 court-ordered congressional redistricting plan as a base from which to work and made only one change to the court plan before sending it to the Senate, which in turn also made a minor change. In the end, the congressional redistricting plan, as adopted by the General Assembly and recently pre-cleared by the U.S. Justice Department, was little different from the plan used in 1992. (A more detailed summary of H. 4332 can be found on page 8 of this Update, under "Legislation Enacted by the General Assembly.)

Reapportionment of State House districts has proven to be a more controversial matter, however. In passing H. 4333 in late January, the House adopted a plan which made minor changes to approximately two dozen districts. Amendments introduced on the floor of the House to increase the number of majority black seats were tabled. The Senate passed intact the House redistricting plan, and in February the governor allowed H. 4333 to become law without his signature. While the governor had concerns with the plan, he wanted it to be sent to the Justice Department for review so as to clarify what was required of South Carolina in drawing new districts. (The 1992 House and Senate redistricting plan never made it to the Justice Department because the governor successfully vetoed the plans, following which a federal panel drew new lines. Under the Voting Rights Act, any election-related changes made in South Carolina must be pre-cleared by the U.S. Justice Department.)

On Monday, May 2, 1994, the Justice Department announced that it would not approve the plan to redistrict the House. The Department claimed that in drawing a reapportionment plan, the House was more concerned with protecting incumbents than in expanding the number of minority districts, and cited a number of areas in the Midlands and Low Country where additional majority-black districts could have been drawn. On Thursday, May 12, the House took up by special order H. 4349, a bill introduced by the Speaker Pro Tem to reapportion House districts. As given second reading by the House that day, H. 4349 expands the number of majority-black House districts and also places a few incumbents in the same districts. Third reading of the bill was given on Monday, May 16. Also that day, a panel of federal judges gave the House two additional weeks to finish the reapportionment process--i.e., obtain Senate approval of the plan, approval of the governor and the approval of the Justice Department. If the House reapportionment plan does not meet that deadline, then a panel of federal judges would order the 1994 House elections held under new districts drawn by the panel, and the filing period for candidates, scheduled to begin Wednesday, June 1, would be delayed a week. If the

House plan wins approval from the concerned parties, it would be effective beginning with this year's elections and through the year 2000, after which time new districts would be drawn as is required following each Census.

Status: H. 4333 was adopted by the General Assembly and became law without the signature of the governor on February 15, 1994, but the Justice Department has refused to permit implementation of the plan. H. 4349 received third reading in the House on Monday, May 16, 1994 and has been sent to the Senate.

Partial Refund of Biennial License Plate and Registration Fees (H. 4377, Rep. Kirsh). Under these provisions, when the owner of a motor vehicle licensed and registered for a biennium (2-year period) surrenders his license plate and registration in the first 12 months of the licensing period, then the Department of Revenue and Taxation is required to refund to the owner an amount equal to one-half (1/2) the registration fee paid on the vehicle. If the owner is simultaneously registering another vehicle, then the refund amount may be applied against the registration fee due. The bill also sets the biennial registration fee for a private passenger-carrying vehicle of a person age 64 at $22. (Currently, the biennial registration fee of a vehicle of a person under age 65 is $24, while the fee is $20 for the vehicle of a person age 65 or older.)

Status: Passed the House on March 2; Approved by Senate, with amendments, on April 27.

Schoolhouse Safety Alliance Act (H. 4414, Rep. Phillips). This bill represents a comprehensive approach to addressing the problem of school violence, by focusing on collaboration to prevent such violence, promoting parental responsibility and judicial response.

In focusing on collaboration to prevent school violence, the bill establishes a statewide Schoolhouse Safety Resource Center at the State Department of Education, the purpose of which is to provide technical assistance and training to all schools regarding violence prevention and intervention, strategies for collaboration with appropriate agencies, crisis management planning and preparation for use of the judicial system. The center also must disseminate information on the best practices to address school crime. The Department of Education must pilot different approaches to avoiding school violence by identifying cluster schools in urban and rural settings in high crime areas to serve as model projects for prevention of school violence, with each cluster school implementing a specialized method of intervention or prevention in an intense three-year project. The Department, working through the Schoolhouse Safety Resource Center, would conduct an external evaluation of the process at the end of the third year of each pilot program. The bill also requires each school district to institute case management teams in every school,

consisting of teachers, school administrators and others, which would work as units on behalf of students displaying signs of recurrent aggressive and violent behavior. Additionally, conflict resolution strategies must be taught to juveniles and young adults sentenced as youthful offenders in correctional facilities.

In promoting parental responsibility for prevention of school violence, the bill requires each school district to establish a procedure for schools in the district to convene a case management team to assist children identified as in need of guidance or counseling to prevent violent behavior. Parents of children identified as candidates for case management are required to participate in case management meetings and in seeking services recommended by the case management team.

As pertains to judicial responses to school violence, the bill requires school officials to report to law enforcement officials criminal behavior which results in violence or poses a direct and serious threat to safety of oneself or others in school. Additionally, the Department of Juvenile Justice is required to establish a self-contained residential boot-camp program for non-violent juvenile offenders, so that, among other things, a process of change in juvenile attitudes and behaviors is encouraged and juveniles are redirected to live law abiding and productive lives. The bill also grants to the Family Court jurisdiction to order parents of children identified as in need of services or counseling to prevent violent behavior to appear before it and, upon finding the child's behavior can be changed, order an assessment of the family or family participation in treatment or services to improve the behavior.

Status: Passed the House on March 23; Currently pending on the Senate Statewide Second Reading Calendar.

Nationwide Interstate Banking (H. 4566, Rep. Jennings). This bill would open South Carolina to nationwide interstate banking in 1996, allowing out-of-state bank holding companies which do not have a South Carolina bank subsidiary to acquire a South Carolina bank holding company or a South Carolina bank, contingent on the acquisition being approved by the State Board of Financial Institutions.

Status: Passed the House on March 29; Set for special order in the Senate.

School to Work Transition Act (H. 4681, Rep. McElveen). This bill is designed to enact a "school to work" system in South Carolina, to better prepare students not bound for college with the skills necessary to enter an increasingly complex, more demanding workplace.

As part of a school to work system, the State Board of Education must establish a structure for preparing students for employment and lifelong learning which expands upon the current "Tech Prep" model, to

include (1) quality schooling with a rigorous curriculum; (2) career counseling; (3) work exploration and experience; and (4) structured work-based learning. Emphasis in developing this system must be on a structure flexible enough to meet local school needs and available to all students as needed and appropriate. Students and their parents would make the decision as to which track a student must follow, with students allowed to transfer between "Tech Prep" and "College Prep" tracks within guidelines established by the State Board of Education to allow for transfer up to the senior year in high school. The State Board of Education must, beginning with the upcoming school year, establish by regulation quality schooling, which must at a minimum include a rigorous, relevant academic curriculum and changes in vocational educational programs. The bill lists features which must be included in the curriculum and programs and also requires the State Board of Education, beginning in school year 1996-1997, to establish regulations for career exploration and counseling, a range of mentoring opportunities, and structured work-based learning opportunities.

The bill also lists requirements for school district boards of trustees in implementing this system.

The bill also prohibits a child under age 18 who is enrolled in a middle or high school from being employed more than 20 hours a week during the school year (except for holiday periods), unless (a) the child is 16 or 17, and (b) has obtained written permission to work beyond this time limit from his parent or guardian and from his principal or designee. A local school district board of trustees, however, upon affirmative voter may exempt the school district from this requirement.

Status: Passed the House on March 22; Approved, with amendments, by the Senate on May 3.

Safe Cremation Act (H. 4756, Rep. Waites). This bill provides requirements for purposes of authorizing and conducting cremations in South Carolina. Under these provisions, a person may authorize his own cremation and provide for the final disposition of his cremated remains, by executing a cremation authorization form. A person may revoke this authorization at any time by providing written notice to the funeral director which assisted the person in making these arrangements and the crematory authority designated to perform the cremation. At the time of death of a person who has executed a cremation authorization form, the person possessing the executed form and the person charged with making arrangements for final disposition of the decedent who has knowledge of the existence of the form must ensure that the decedent is cremated and that final instructions contained on the authorization form are carried out. The bill lists other persons who also may serve as the deceased's authorizing agent and who may, in the absence of a pre-need cremation authorization, authorize the cremation or revoke the cremation authorization.

The bill prohibits a crematory authority from cremating human remains until it receives a copy of the death certificate, a cremation authorization form executed by the deceased on a pre-need basis or by the authorizing agent, a completed and executed burial transit permit, and a cremation permit. The bill lists information which must be included in the authorization form, which includes, among other requirements, authorization from the authorizing agent and the funeral director or establishment for the crematory authority to perform the funeral; a statement that the human remains do not contain any material or implant which could be hazardous or damaging to the cremation chamber or to the person performing the cremation; the method, if known, by which disposition of the cremated remains is to take place, and a specific statement authorizing the crematory authority to proceed with the cremation upon receipt of the human remains. An authorizing agent, after executing a cremation authorization form, may revoke the authorization and within 12 hours of its execution instruct the funeral establishment to instruct the crematory authority to cancel the cremation. The crematory authority may not be held liable, except in cases of gross negligence, for the cremation, release or disposal of human remains if the authority acted in accordance with the provisions of this act.

A crematory authority is required to maintain at its place of business a permanent record of each cremation occurring at its facility, and must maintain for at least 10 years a record of all cremated remains disposed of by the authority. The bill also lists requirements for delivery of bodies to crematory authorities and prohibits the cremation of an unidentified body for at least 30 days, with the medical examiner required to have those remains buried or interred in a cemetery in the county where the remains were found. The South Carolina State Board of Funeral Service may refuse to issue or renew the license or may suspend or revoke the license of a funeral director or embalmer who violates these provisions, and any person violating the provisions of this bill is subject to a civil fine not exceeding $5,000.

Status: Approved by the House on April 28; Currently pending on the Senate Statewide Second Reading Calendar.

Health Care Cooperative Agreements (H. 4775, Rep. Hodges). This bill is designed to encourage the development of cooperative agreements between two or more health care providers for the sharing of health care services such as technology and facilities. With improved technology and services contributing to the escalating costs of health care, it is hoped that through adoption of these agreements, medical resources will be used more wisely and thus cost increases can be moderated.

Under these provisions, a health care provider, health provider network or health care purchaser may negotiate, enter into and conduct business pursuant to a cooperative agreement without being subject to challenge or scrutiny under any state antitrust law. Additionally, conduct

in negotiating and entering into a cooperative agreement for which approval is sought from the state (through a certificate of public advantage) is immune from state antitrust laws, regardless of whether the certificate is issued. The bill provides that it is the General Assembly's intent that these provisions also immunize covered activities from challenge or scrutiny under federal antitrust laws.

A health care provider, health care purchaser or health provider network may negotiate and enter into cooperative agreements with other health care providers, health care purchasers or health provider networks if the likely benefits resulting from the agreements outweigh any likely disadvantages resulting from the agreement. Parties to a cooperative agreement may apply to the Department of Health and Environmental Control (DHEC) for a certificate of public advantage. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any monetary or other consideration passing to a party under the agreement. Upon receiving the application, DHEC must forward a copy to the attorney general, who must review the application within 30 days after its receipt. The attorney general may advise DHEC to approve or deny the application, but failure on his part to notify DHEC within 30 days constitutes his approval of the request. DHEC must grant or deny the application within 60 days after receipt from the applicant or from the date of any public hearing held regarding the application.

DHEC must issue a certificate of public advantage for a cooperative agreement if the department determines that (1) the applicants have demonstrated that the likely benefits resulting from the agreement outweigh the agreement's likely disadvantages, and (2) the reduction in competition likely to result from the agreement is reasonably necessary to obtain the benefits likely to result. The bill lists factors DHEC must consider in determining whether the agreement's advantages outweigh its disadvantages and whether the resulting reduction in competition is necessary to achieve the agreement's benefits.

DHEC also must actively monitor and regulate agreements approved under these provisions to ensure that the agreements remain in compliance with the conditions of approval. The department must charge an annual fee to cover the cost of monitoring and regulating these agreements. While the certificate is in effect, a report on the activities pursuant to the cooperative agreement must be filed with DHEC every 2 years, so that DHEC may determine whether the agreement continues to comply with the terms of the certificate. DHEC may revoke a certificate upon finding that (1) the agreement is not in substantial compliance with the terms of the application or the conditions of approval; (2) the likely benefits resulting from the certified agreement no longer outweigh any disadvantages attributable to any reduction in competition resulting from the agreement; or (3) DHEC's certification was obtained as a result of intentional misrepresentation to the department or as the result of coercion, threats or intimidation toward any party in the agreement.

DHEC's decision to revoke a certificate is entitled to judicial review in accordance with the Administrative Procedures Act.

DHEC also must maintain on file all cooperative agreements for which certificates remain in effect. A party to the agreement who terminates the agreement must notify DHEC within 15 days of the termination. If all parties terminate their participation in the agreement, then DHEC must revoke the certificate for the agreement.

The provisions of this bill do not exempt health care providers or purchasers from compliance with the state's certificate of need laws.

Status: Approved by the House on March 25; Amended and given second reading by the Senate on May 11, and ordered to third reading with notice of general amendments.

1994-1995 General Appropriation Act (H. 4820, House Ways and Means Committee). This bill is the proposed $3.93 billion state budget for fiscal year 1995 (July 1, 1994 through June 30, 1995). A summary of some of the appropriation highlights and permanent provisions in this bill can be found below. (Because of space limitations, only a limited number of budget highlights are printed in this Update; for a more detailed summary, please see the March 22 Update.)

(I) Appropriation Increases

---$63 million for public education, to, among other things, fully fund the Education Finance Act, cover inflation of 2.4 percent, and fully fund the southeastern states' average teacher salary of $30,457.

---$40.9 million for higher education, of which $32.5 million is appropriated for formula funding, $1.8 million is for the Southeastern Manufacturing Technology Center, and $6.6 million is to pay for the "Other Funds" share (tuition and fees) of the pay plan.

---$24.9 million to maintain the current Medicaid program.

---$5.2 million additional for the Department of Juvenile Justice to expand detention center programs and meet other related needs.

---Additional $23.7 million for the Department of Corrections for opening costs and operations of several facilities and community control centers.

---Additional $6.7 million for the Department of Disabilities and Special Needs.

(II) Permanent Provisos

---Requires driver's licenses to be renewed every 5 years, instead of every 4 years, with the cost of obtaining a new or renewed license increasing from $10 to $12.50. The fee to replace a lost driver's license increases from 50 cents to $3.00.

---Revises eligibility requirements for dealer license plates, with a dealer selling 20 vehicles a year eligible for 2 such plates and allowed to purchase an additional plate for every 15 vehicles sold beyond the initial 20. The cost of dealer plates is $20 each.

---Requires at least 50 percent of a county's apportionment of gas tax monies under the "C" funds program to be applied to the state highway system, while up to 50 percent of these monies may be used for local paving and improvements.

---Repeals the state's mandatory vehicle inspection law.

---Prescribes criminal and civil penalties for insurance fraud, with the crime being a misdemeanor upon first offense and a felony for a second or subsequent violation. Also establishes an Insurance Fraud Division within the Attorney General's Office to prosecute insurance fraud and requires the State Law Enforcement Division to investigate cases of alleged insurance fraud.

---Prohibits state-supported colleges and universities, including technical colleges, from increasing tuition and fees charged to in-state undergraduate students until the institutions recapture and maintain 100 percent of total education and general cost for out-of-state undergraduate students.

---Prescribes criminal and civil penalties for insurance fraud, with the crime being a misdemeanor upon first offense and a felony for a second or subsequent offense. Also establishes an insurance fraud division within the Attorney General's Office to prosecute insurance fraud and requires the State Law Enforcement Division to investigate cases of alleged fraud.

Status: Passed the House on March 23; Approved, with amendments, by the Senate on May 12.

<u>Welfare Reform Measures</u> (H. 4835 and H. 4837, Rep. McElveen).

Welfare reform has been an issue of significant interest during the 1993-1994 legislative session. In recent years, concern has been expressed that too many people are on welfare for too long a time, that many recipients receiving welfare are having more babies to seek increased benefits, and that benefits are at such a level that recipients are discouraged from seeking work. Last year, a number of welfare bills were introduced in the House, attacking the welfare problem in differing and sometimes incompatible ways. Among legislation introduced last year were

bills to require recipients to use the Norplant birth control device, exclude children born into welfare families from benefit payments, and require former benefits to repay the benefits they had received.

With interest in welfare reform remaining strong, and a growing consensus that the problem needed to be addressed in a more coherent manner, in 1993 the House passed a resolution to create a task force. The purpose of the task force was to study all aspects of the problem of welfare dependency in South Carolina and to recommend a welfare reform plan. This task force included House members and representatives of many state agencies and private organizations with a role or interest in human services. The task force divided into study groups, meeting extensively last fall, and issued its final report just prior to last Christmas. In its final report, the task force issued many recommendations to help ease welfare dependency, and these recommendations were introduced as legislation last month in the House. Two joint resolutions (H. 4835 and H. 4837) constitute those recommendations, as summarized below:

H. 4835 (Representative McElveen), titled the "South Carolina Self-Sufficiency and Parental Responsibility Act," seeks to promote self sufficiency among welfare recipients, among other things, loosening some restrictions on earnings and other financial assets of recipients while imposing sanctions on those unwilling to seek work. Listed below are some of the recommendations of this joint resolution:

---Prohibits a family from receiving AFDC (Aid to Families with Dependent Children) benefits for more than 36 months unless the head of household is (1) permanently or totally disabled, whether physical or mental; (2) unable to obtain employment in the private sector because no job for which the person is qualified is available but the person is working 40 hours a week in a volunteer public service community placement; (3) providing full-time care to a disabled dependent in the home; or (4) unemployed because Work Support program services such as transportation or child care are not available to assist the person in becoming self-sufficient. This restriction takes effect July 1 of this year, applying to families applying for AFDC benefits after June of 1994 and, upon recertification, to families receiving or who have been determined eligible to receive AFDC benefits as of July 1, 1994.

--- Directs the Department of Social Services (DSS) to expand its Work Services Delivery System (an employability development and job placement program for AFDC recipients) to all 46 counties and to apply for a federal waiver authorizing the State to require AFDC parent(s) to participate in the program when the parent's youngest child is six months old, as currently opposed to three years old. Also directs DSS to apply for a federal waiver authorizing a transition program for reduction and elimination of benefits to AFDC recipients, to help those who otherwise would be ineligible for these benefits but do not have sufficient earning power or income to avoid returning to welfare. Under the transition program, the recipient would continue to receive AFDC day care and

Medicaid benefits, but the recipient's AFDC economic benefits would be eliminated over a year. Also directs DSS to apply for a federal waiver to allow recipients to own a car regardless of value (currently a family receiving AFDC may not own a car worth more than $1,500).

---Directs DSS to apply for a federal waiver to revise its Work Support Program and AFDC Program to implement a self-sufficiency pilot project in the Trident Area (Berkeley, Charleston and Dorchester Counties) and in Barnwell County, providing individualized intensive case management which, among other things, provides a continuum of services, identifies a time frame necessary for each client to complete an individualized plan for self-sufficiency, and provides community service employment to adults when they successfully complete their individualized plans but no jobs are available for employment. Clients refusing to comply with a plan for self-sufficiency must have their AFDC benefits terminated permanently after refusal to participate a certain number of times.

---Directs DSS to seek federal funds for a demonstration project in the Trident Area and in Barnwell County using the concept of entrepreneurial development to create jobs and provide incentives for AFDC clients in their efforts to obtain self-sufficiency and independence. This project should create jobs in identified markets for AFDC clients, providing clients with job skills and opportunities to develop expertise in operating and purchasing businesses. Additionally, DSS is to develop a demonstration project in those four counties which offers incentive packages to industries in an effort to obtain employment for AFDC clients. Incentives may include, among others, welfare payments as salary supplements for AFDC employees for a limited time or transportation to the work site for new employees and AFDC recipients. To assist AFDC families in these pilot projects in becoming more financially independent and economically stable, and to reduce recidivism, DSS is to apply for a federal waivers (1) allowing 50 percent (as currently opposed to 33-1/3 percent) of a family's gross income to be disregarded until the remaining 50 percent exceeded the amount of income allowed for AFDC eligibility; and (2) increasing the amount of assets a family may have from $1,000 to $3,000.

---To promote parental responsibility, DSS must apply for a federal waiver to waive the "parental deprivation rule," under which a family is ineligible for AFDC benefits if both parents live in the home and neither is disabled. Also urges greater access to family planning counseling (including a federal waiver extending Medicaid family planning service eligibility up to 24 months after childbirth) and expansion of concept of family planning to include, among other things, more education about reproductive health and sexually transmitted diseases.

H. 4837 (Representative McElveen), titled the "South Carolina Welfare and Administrative Reform Act," like H. 4835, contains a number of recommendations to promote self-sufficiency among welfare recipients and

discourage abuse of the welfare system. Among the recommendations of this joint resolution are the following:

---Requests the Department of Social Services (DSS) to apply for a federal waiver allowing DSS to impose more meaningful sanctions for an AFDC client's refusal to participate in DSS's Work Support Program, with clients refusing to participate having his benefits terminated permanently. AFDC Clients or those seeking benefits who are living in counties where the work support program has not been implemented must agree to participate in the program when it is implemented as a requirement for continued reception of benefits.

---To assist clients in becoming financially independent, DSS is to seek a federal waiver allowing the State to exclude interest income and dividends in determining AFDC eligibility and payment amounts. DSS also is to work with the Department of Public Safety and local governments in endorsing local efforts to develop a statewide network of mass transit systems, so that AFDC recipients may have reliable transportation in going to work.

---Requires the Department of Health and Environmental Control (DHEC) to establish a task force of reproductive health care providers and professionals, for the purpose of developing incentives to increase physician participation in the Medicaid program so that better access to comprehensive family planning and prenatal care can be provided to Medicaid clients. Also, to assist AFDC families in directing their efforts at becoming financially independent rather than diverting their resources to care of family members with health and medical problems, the State, as funding is available, must, among other things, provide greater access to and place emphasis on early and continuous prenatal care and provide school nurses to increase access to primary care and more effective identification and referral of health problems among children.

---Directs DSS and the Department of Health and Human Services Finance Commission to ensure that federal and state procurement and purchasing regulations do not unnecessarily delay payments to providers of services to AFDC clients and child care and transportation providers. DSS also, in conjunction with the Department of Revenue and Taxation, is to study the feasibility of integrating AFDC client information with the driver's license digitization program and study the development of the digitization of data for use in an electronic benefits program and other programs as may be applicable.

---Directs DSS and the Department of Health and Human Services Finance Commission to develop a voucher management system for child day care that will increase the number of child care slots available for AFDC clients. DSS also is to encourage day care providers to offer day care services during second and third shift time periods.

---Directs DSS to require all children between ages 16 and 18 who are recipients of AFDC benefits and who have not finished high school to attend school as a condition of continued eligibility. DSS also is to work with the Department of Education (1) in examining whether the age for compulsory school attendance should be raised from 16 to 18; (2) to ensure that existing continuing education and adult education programs are designed to help AFDC clients in attaining self-sufficiency; and (3) to endorse and promote school-to-work transition programs, linking at-risk secondary school students to the workplace and to appropriate work-related post-secondary education. Also directs DSS, in conjunction with the State Board for Technical and Comprehensive Education, to work closely with businesses and industries to design curriculums to produce students with skills needed by these businesses and industries and to develop specially-designed curriculums which target and train AFDC clients for occupations identified by the Employment Security Commission as top growth occupations of the future.

---Grants to the Family Court jurisdiction to require a parent or custodian of a child who receives child support on behalf of a child to submit to the parent paying the support or to the court, or both, at times required by the court, an accounting of expenditures made from the child support received and evidence of those expenditures.

Status: Both measures approved by the House on April 29; Both bills are currently pending in the Senate General Committee.

Child Support Enforcement Act of 1994 (H. 4836, Rep. McElveen). Like H. 4835 and H. 4837, this bill represents the work of the welfare reform task force and is designed to improve collection of child support to prevent the need for public assistance for some families and to provide others the means to get off the welfare system. This bill also includes provisions of some bills introduced earlier this session for purposes of determining paternity and child support. Among the features of this bill are the following:

---Requires the court to approve settlements and voluntary agreements in paternity and child support cases upon a finding of fairness and requires the parties to file a summons and complaint with the settlement or voluntary agreement in order to submit themselves to the jurisdiction of the court.

---Creates several presumptions for paternity regarding evidence introduced at a hearing to determining paternity. When test results showing a statistical probability of paternity are introduced, a presumption of the putative father's paternity is created if the statistical probability of paternity is 95 percent or higher. A verified and voluntary acknowledgment of paternity creates a rebuttable presumption of the putative father's paternity, while a foreign paternity determination (whether established through administrative or judicial

process) creates a conclusive presumption of paternity. Evidence of a birth certificate containing the signature of the mother and the putative father also creates a rebuttable presumption of paternity.

---Replaces the Uniform Reciprocal Enforcement of Support Act with the Uniform Interstate Family Support Act. This legislation provides uniform legislation to assist with the enforcement of interstate child and spousal support orders and to provide criminal and civil procedures for enforcement for these orders. (See summary of H. 4844, which immediately follows this summary of H. 4836, for more information on that legislation.)

---Provides that an assignment of the rights of child support to the State by the Department of Social Services includes the rights to health care expenses and that a person's reception of an application for Medicaid benefits is considered to be an assignment of the right to support.

---Requires a paternity acknowledgment to be provided to the Department of Social Services at no charge for the purpose of establishing a child support obligation and that otherwise this acknowledgment is not subject to inspection except upon order of the Family Court.

---Requires the Department of Social Services, for purposes of strengthening and promoting the enforcement of child support and maximizing the amount of support collected, to collaborate more effectively with the Employment Security Commission to more effectively utilize the Commission's Unemployment Benefit Intercept Program for withholding of child support payments and to develop, in conjunction with the Department of Insurance, a procedure for attachment of insurance settlements for the collection of child support arrearages.

---Allows the Department of Health and Environmental Control to suspend or revoke licenses or assess monetary penalties against persons or health facilities which fail to comply with procedures developed by the Department of Social Services for obtaining voluntary paternity acknowledgments on newborns.

Status: Passed the House on April 14; Currently pending in the Senate General Committee.

<u>Uniform Interstate Family Support Act</u> (H. 4844, Rep. Shissias). This replaces the current Uniform Reciprocal Enforcement of Support Act with the Uniform Interstate Family Support Act. This new legislation is designed to assist with the interstate enforcement of child or spouse orders and to provide civil and criminal enforcement procedures. Among the features of this legislation are the following:

---Specifies that the Family Court is the tribunal, or entity, of South Carolina authorized to establish, enforce and modify support orders

to determine parentage. The court also may serve as an initiating tribunal under these provisions to request a tribunal (i.e., court, administrative agency, etc.) of another state to enforce or modify a child or spouse support order of another state.

---Requires employers who do business in South Carolina to comply with an income withholding order issued in another state as if the order had been issued by the South Carolina Family Court.

---Allows the governor of South Carolina to demand that the governor of another state surrender an individual found in the other state who is charged criminally in South Carolina with having failed to provide for the support of an obligee. South Carolina's governor also may surrender an individual found in this state who is charged criminally in another state with having failed to provide for the support of an obligee upon the demand of another state's governor.

Status: Passed the House on April 20; Currently pending in the Senate Judiciary Committee.

School Safety and Juvenile Justice Reform Act of 1994 (H. 5058, House Judiciary Committee). This bill incorporates a number of provisions and features to address South Carolina's juvenile crime problems. Among the features of this bill are the following:

---Requires the Department of Juvenile Justice (DJJ) to decentralize its Columbia facilities and consider opening smaller-sized, regional facilities in various areas of the state. DJJ also is to reduce the number of its beds utilized for nonviolent, non-repeat offenders by developing alternative programs and services to meet their needs. These programs and services must include, among others, juvenile arbitration, electronic monitoring, restitution programs and community service work programs. DJJ also must provide educational programs to all preadjudicatory juveniles in its custody.

---Allows the Family Court to require the parent of a child brought before the court for adjudication of a delinquency matter and agencies providing services to the family to cooperate and participate in a plan adopted by the court to meet the needs and best interests of the child.

---Increases from $1,000 to $3,000 the maximum fine which may be imposed on a person convicted of carrying a weapon on school property and requires confiscation of that weapon.

---Allows a child age 16 or older charged with (1) an offense which would be a misdemeanor if committed by an adult, or (2) a felony carrying a maximum sentence of 10 years or less to be tried as an adult, while a child age 14 or 15 charged with an offense which if committed by an adult

would carry a maximum sentence of 15 years or more also may be tried in court as an adult.

---Expands the conditions under which a child may be placed in a secure detention facility, so that a child who had in his possession a deadly weapon or who has a demonstrable recent record of wilful failure to comply with prior placement orders may also be placed in such a facility.

---Requires a school district board of trustees to expel for at least the remainder of the school year a pupil is convicted or pleads nolo contendere or is adjudicated delinquent for a violent crime or for carrying a weapon on school property.

---Requires each public middle, junior and high school to be equipped with one hand-held metal detector, with funds for these detectors appropriated by the General Assembly.

---Requires the State Board of Education, before July of 1996, to develop courses teaching peaceful conflict resolution and nonviolent living to students in all grades of the state's public schools.

---Requires each school to have an approved comprehensive safety plan, and each school district to have a comprehensive district safety plan, by the end of 1995. Also establishes a Schoolhouse Safety Resource Center within the Department of Education which, among other things, must establish the criteria and process by which school and district safety plans are evaluated for approval by the center and identify and provide explanations of state and federal criminal laws relevant to school safety and which supplement school or district disciplinary codes.

---Requires the Department of Mental Health and the Department of Education to jointly establish a three-year pilot project for school-based counseling services. This project must serve at least 14 schools during its first year.

---Contains provisions to improve handling of cases of nonattendance by students. Requires a school district board of trustees to notify all enrolled students and parents or guardians of students of the school attendance laws and resulting penalties/consequences at the beginning of each school year. Also requires a school district, after a student has been absent a certain number of times, to schedule a conference with the student and parent or guardian and formulate a proposed intervention plan to ensure the student's continued attendance. If nonattendance continues, a court hearing must be held to determine whether the parent or guardian, student and school have taken actions assigned to them in the intervention plan, and the court may order any party who has not performed activities assigned in the plan to perform such activities or take other actions. A parent or guardian who does not comply with a court order pertaining to these provisions may be held for contempt, punishable by fine of not more than $250 or imprisonment not exceeding 30 days for each offense.

---Provides that a juvenile's record is open to public inspection if his record includes conviction for a violent crime, a crime in which an illegal weapon was used, drug trafficking, or an alcohol-related offense for which the penalty is more than one year. Prohibits expungement from a juvenile's record any adjudication for having committed a crime in which an illegal weapon was used; drug trafficking, or an alcohol-related offense for which the penalty exceeds one year (unless the person is not more than age 25 and has not been adjudicated delinquent or convicted of this alcohol offense within the preceding six years).

Status: Approved by the House on April 29; Currently pending in the Senate Judiciary Committee.

Regulation of Abortion Clinics and Informed Consent for Abortion (S. 88, Sen. McConnell). This bill contains provisions pertaining to regulation of abortion clinics and procedures for obtaining an abortion in South Carolina.

The bill requires any facility where a second trimester or five or more first trimester abortions are performed in a month to be licensed by the Department of Health and Environmental Control (DHEC) to operate as an abortion clinic. DHEC must promulgate regulations for these facilities pertaining to such matters as sanitation, staff qualifications, procedures for providing emergency care and medical records and reports. The definition of "hospital" as pertains to those hospitals certified by DHEC to perform abortions is amended to include those hospitals licensed by DHEC in accordance with the State's Certification of Need and Health Facility Licensure Act. The bill also requires products of conception (i.e., fetal tissues and embryonic tissues) to be managed in accordance with requirements for pathological waste pursuant to the State's Infectious Waste Management Act.

As amended by the House, S. 88 also includes the "Woman's Right to Know Act" (H. 3267). {As noted under "House Week in Review" of this Update, the House passed H. 3267 in early March but the bill has yet to reach the calendar of the Senate.} Under these provisions, except in a medical emergency, an abortion cannot be performed unless the woman has been informed by the doctor performing the abortion or other health professional of the procedure involved and the probable gestational age of the embryo or fetus at the time the abortion is to be performed. Additionally, the woman must be offered the opportunity to review materials printed by DHEC which inform the woman about abortion procedures and their risks; the characteristics of the embryo or fetus at 2-week intervals; alternatives to abortion, agencies which provide prenatal care, childbirth and neo-natal care benefits; and mechanisms for obtaining child support. Once a woman has acknowledged receiving these materials, she must wait 2 hours before obtaining an abortion; however, the 2-hour waiting period is not required in a medical emergency or if the woman acknowledges receiving these materials from the clinic by mail or picking up the

materials at a local health department at least 24 hours before the abortion is scheduled to be performed. Clinics must maintain for three years the woman's written verification that the information was provided to her and received by her. Acknowledgement of reception of these materials is not required if the abortion is performed pursuant to a court order, or if the woman is mentally retarded and her parents, legal guardian or legal representative consent to the abortion. If the abortion is to be performed on a minor, then the information must be furnished to the parents, who then must acknowledge receiving these materials before the abortion can be performed. These provisions requiring clinics and other places where abortions are performed to provide this information are suspended if, through no fault of the clinic, the information is unavailable.

Performance of an abortion without complying with these provisions is a misdemeanor, punishable by a fine of between $1,000 and $5,000, with a second or subsequent conviction resulting in imprisonment of between one and five years and a fine of $1,000-$5,000, no part of which may be suspended. The bill also lists provisions governing the disclosure of the name of a woman bringing an action under these provisions and prohibits the Department of Highways and Public Transportation from releasing information about ownership of a motor vehicle licensed and registered in South Carolina within 48 hours of the request, unless the information is needed for emergency purposes.

Status: Approved by the Senate on May 13, 1993; Approved, with amendments, by the House on May 11, 1994.

(3) Legislation Still on House Calendar (as of Monday, May 16)

Listed below is legislation still pending on the House Calendar.

Choice No Fault Auto Insurance (H. 3246, Rep. H. Brown). This bill gives motorists the opportunity to buy no-fault auto insurance coverage or to refuse no-fault coverage and instead retain traditional tort liability coverage. Persons choosing the no-fault option would pay less for their insurance, as initial no-fault premiums would be required to be at least 15 percent lower than tort liability coverage for similar insureds. However, no-fault insureds would have limited rights to sue; lawsuits for damages for pain and suffering would be prohibited unless the injury reaches the "verbal" threshold or the at-fault person was DUI or guilty of intentional misconduct. This "verbal threshold" is defined as permanent and serious bodily injury or disfigurement; loss of a bodily function; actual economic loss exceeding the policy limits of the at-fault party; or death.

The bill also mandates the following rate reductions: 1.5 percent for removing automatic coverage for putative damages from insurance; 15 percent for non-stackable uninsured motorist coverage; and 18 percent for non-stackable underinsured motorist coverage. These coverages would still be available as options for an insured but would not automatically be a part of the insurance policy as they are now. Additionally, the bill repeals the mandate to write physical damage coverages (such as collision and comprehensive) for all drivers and eliminates the mandate to write liability coverages for persons who do not qualify for the safe driver discount. Persons with a safe driver discount would be allowed to drive without securing liability insurance by paying a $250 fee into an uninsured motorist fund. The fund would be used to reduce the recoupment fee, finance driver safety measures and enforce uninsured motorist laws.

The bill also provides that the rate for policies ceded by insurance companies to the Facility is the Facility rate ("DA's rate"), or the individual company's rate, whichever is greater. This rating change is to be phased in over a two-year period. A four-tier rating system would be established in the voluntary market. Persons with a five-year clean driving record would have to be written at one of the two best rates, while persons with a ten-year clean driving record would have to be written at the best rate; neither group of drivers could be placed in the

Facility. The bill also increases fines for knowingly operating an uninsured vehicle and adds an optional public service penalty.

Status: Pending on House Second Reading Statewide Contested Calendar.

Administrative License Revocation for DUI (H. 3345, Rep. Jennings). This bill provides for the suspension of a driver's license of (1) a person age 21 or older who, while operating a motor vehicle, is determined to have a blood alcohol content of .04 percent or above. Testing may be ordered on any person arrested for offenses arising out of acts done while under the influence of alcohol. If the person refuses to consent to testing, then his license or permit must be suspended for three months. If the person refusing testing is a resident without a license or permit to operate a motor vehicle in South Carolina, then issuance of a license or permit to drive must be denied for three months after the date of the alleged violation.

The bill also persons whose licenses are suspended under these provisions to obtain a hearing to review the suspension. In a hearing pertaining to a person's refusal to be tested, the sole issues to be considered are the following:

(1) whether the person was placed under arrest;

(2) whether the person was informed that he did not have to take the test, but that his privilege to drive would be suspended or denied if he refused to submit to testing; and

(3) whether the person refused to submit to the test as requested by the officer.

Based on these factors, the Department of Highways and Public Transportation would then order that the suspension or denial of issuance of a license either be rescinded or sustained.

In a hearing pertaining to whether the person whether the person tested .04 percent or above (if under age 21) or .15 percent or above (if 21 or older), the only issues to be considered are whether:

(1) the person was placed under arrest;

(2) the person was advised of the consequences of registering .04 percent or above (if under age 21) or .15 percent or above (if age 21 or older) and there was not a variance of these tests of more than .02 percent, with the lesser reading being at least .04 percent (if under age 21) or at least .15 percent (if age 21 or older);

(3) the individual taking the samples or administering the tests was qualified; and

(4) the samples given and tests administered were in accordance with these provisions.

If the Department upholds the suspension or denial of issuance of the license, then the suspension period is:

(a) three months, if the person's driving record shows no prior DUI convictions, license suspensions or refusals to submit to testing for DUI; or

(b) six months, if the person's driving record shows one or more prior DUI convictions, license suspensions or refusals to submit to DUI testing in the previous 10 years.

The bill also requires videotaping of persons arrested for DUI. During the videotaping, the defendant must furnish background information and be advised of his rights to refuse the test and the consequences of the refusal. The videotape also must include the defendant taking the test. The videotape is admissible as evidence in a DUI trial. Anyone who pleads guilty or nolo contendere, or is convicted of DUI, is charged a $35 fee for the video. The State Law Enforcement Division (SLED) is responsible for administration of the testing program, to include supplying and maintaining the video equipment. Additionally, the educational services component of an Alcohol and Drug Safety Action Program, required of anyone issued a provisional driver's license, must include presentation by a victim or a member of a victim's family of a DUI accident.

Status: Pending on House Statewide Second Reading Uncontested Calendar.

Auto Insurance Reform Measures (H. 3421, Rep. Cato). This bill is a package of auto insurance reform measures aimed at various problems that have an impact on the cost of auto insurance in this state.

One provision of the bill prohibits lawsuits for damages for pain and suffering unless the injury reaches the "verbal" threshold or the at-fault person was DUI or guilty of intentional misconduct. The "verbal threshold" is defined as permanent and serious bodily injury or disfigurement; loss of a bodily function; actual economic loss exceeding the policy limits of the at-fault party; or death.

This bill also repeals the mandate to write physical damage coverages and requires the Chief Insurance Commissioner to compile a comparative statistical analysis of persons for whom physical damage coverage is written and for whom such coverage is denied indicating the data for categories of race, sex, income, occupation and geographical territory. Additionally, this bill provides that the rate for policies ceded to the Facility by insurance companies is the DA rate, or the individual company's filed rate, whichever is greater. This change is to be phased in over a two-year period. In the voluntary market, the current two-tier system (base and objective measures) would be replaced by four rate tiers. Persons with a five-year clean driving record must be written at one of the two best rates while persons with a ten-year clean driving record must be written at the very best rate offered; neither group of drivers could be ceded to the Facility.

The bill also contains three measures aimed at the problems of uninsured motorists. It requires officers to give a driver issued a traffic ticket an insurance verification form, to be completed by the

driver and returned to the Department of Highways and Public Transportation. (This verification requirement was enacted as H. 3424 in 1993.) Additionally, it would involve local law enforcement with uninsured drivers by requiring the Department of Highways and Public Transportation to contract with local law enforcement to confiscate plates on vehicles operated without insurance or on which coverage had lapsed. The local city, county or municipal governing body of the local law enforcement agency collecting the tag would receive 50 percent of the reinstatement fee and 50 percent of the per diem fine collected for each license plate confiscated by the local agency. The final measure would require the Department of Highways and Public Transportation to select a computerized random sample of 500 registered vehicles to provide verification of insurance coverage.

Status: Pending on House Second Reading Statewide Contested Calendar.

State Lottery (H. 3765, Rep. Scott). This joint resolution proposes to amend the State Constitution to authorize a state lottery. No more than 15 percent of lottery revenues may be used for the lottery's operational expenses, while 50 percent of revenues must be expended on prizes. Remaining revenues must be used for nonrecurring expenses for public education (including public higher education), health care, water and sewer infrastructure, other capital improvements, or for reduction of bonded indebtedness, or for a combination of these purposes as provided by law by the General Assembly. Revenues from the state lottery must be paid into a state lottery fund, to be invested by the State Treasurer, with interest earned remaining a part of the fund.

Status: Pending on House Second Reading Statewide Contested Calendar.

Revised Statewide Testing Program (H. 3958, Rep. Wright). Currently, the Basic Skills Assessment Program (BSAP) mandates statewide educational objectives for all grades and directs the State Board of Education to set minimum standards for student achievement in grades 1, 2, 3, 6, 8 and 11. For purposes of the program, basic skills are defined as mathematics, reading and writing. Criterion-referenced tests were developed to measure student gains, with test results used to diagnose student deficiencies and help teachers determine the instruction needed by each student for the student to achieve the minimum state standard.

Under this bill, the state's BSAP laws are changed to a state assessment system that has (1) an early childhood assessment system for students, to include a continuous assessment in grades K-3; (2) a "standards-based" test measuring student achievement in reading, mathematics, science and social studies for all students in grades 3 and 6; and (3) achievement tests in the areas of reading, writing and mathematics at the end of grades 8 and 11 (exit exam) which include the application of school skills to life situations. Until the new exit exam

is developed, the current exit exam will be used as a requirement for high school graduation. Students still would be required to complete a set number of Carnegie units to qualify for graduation. School boards cannot lose authority because of failure to meet state-imposed standards other than those already specified in law. An assessment advisory committee would be established to oversee implementation of the assessment system.

The bill prohibits students from being tested or surveyed on beliefs, values, attitudes or behaviors. Psychological testing and counseling may only be performed with the written consent of parents. Parental permission also is required for school personnel to work with those students in need of immediate conflict resolution, when the safety of the student is involved, or when a crime is thought to have been committed. Furthermore, test information and scholastic records may not be released without the written permission of parents.

This assessment system would be phased in over 5 years, beginning with the 1994-1995 school year and fully implemented by the 1998-1999 school year.

Status: Pending on House Second Reading Statewide Contested Calendar.

Joint Election of Governor and Lieutenant Governor (H. 4888, Rep. Hodges). Currently in South Carolina, persons cast separate votes for governor and lieutenant governor, making it possible for the governor and lieutenant governor to be from separate political parties, as currently is the situation today, with Governor Campbell being a Republican and Lieutenant Governor being a Democrat. If this proposed constitutional amendment is adopted, however, candidates for governor and lieutenant governor would be elected jointly, just as is done at the national level for president and vice president. Under this proposal, a person would cast only a single vote for a candidate for governor and a candidate for lieutenant governor running together, instead of casting separate votes for each office. The person receiving his party' nomination for governor would select a person to be that party's nominee for lieutenant governor. The General Assembly would provide by law (as summarized below in H. 4887) the manner in which a party's nominee for lieutenant governor would be selected.

Status: Pending on House Second Reading Statewide Uncontested Calendar.

Selection of Nominee for Lieutenant Governor (H. 4887, Rep. Hodges). This bill provides for the selection of a party's nominee for lieutenant governor under a proposed voting procedure in which a party's nominees for governor and lieutenant governor would run as a single unit or on a "ticket" (i.e., voters no longer would be allowed to cast separate votes for governor and lieutenant governor). Under these provisions, a party's candidate for governor, whether nominated by party primary or party

convention, would select the party's nominee for lieutenant governor. The selection of the nominee for lieutenant governor must then be ratified by a majority vote of the following individuals voting as a group: (1) members of the Congressional delegation representing that party; (2) statewide-elected constitutional officers representing that party; and (3) the party's executive committee. If the group rejects the nominee, then the gubernatorial nominee must submit the name of another nominee to the group. The party nominees for governor and lieutenant governor would then form a single candidacy, running as a single unit or ticket in the General Election. The bill also requires a person who submits a nominating petition for governor or lieutenant governor to include nominees for both offices, who also must run as joint candidates.

These provisions would be effective upon ratification of a constitutional amendment (as summarized in H. 4888) requiring the governor and lieutenant governor to be jointly elected.

Status: Pending on the House Statewide Second Reading Uncontested Calendar.

Implementation of Federal "Motor Voter" Law (H. 4905, Rep. J. Wilder). Last year, Congress passed, and President Clinton signed, the National Voter Registration Act of 1993 (sometimes referred to as the Federal "Motor Voter" Law), an act designed to expand the potential electorate by making it easier for persons to register to vote. The purpose of H. 4905 is to comply with the provisions of the new federal law.

The bill designates a number of state and other agencies where voter registration activities are to be conducted, including, among others, the Department of Social Services, the Department of Disabilities and Special Needs, and U.S. Armed Forces recruiting offices. Voter registration activities also must be conducted by municipal clerks. No person providing voter registration services at these agencies may seek to influence an applicant's political preference; display a political preference or party allegiance, or lead the applicant to believe that a decision to register to vote has any bearing on the availability of services or benefits. Information pertaining to a person's refusal to register to vote at an agency providing services may not be used for any other purpose other than voter registration.

Each driver's license application, including renewal applications, submitted to the Division of Motor Vehicles serves as an application for voter registration, unless the applicant fails to sign the voter registration form. Failure to sign the voter registration portion of the driver's license application serves as refusal to register. A voter registration application submitted to DMV is considered to update any previous voter registration by the applicant, and information relating to the failure of the applicant for a driver's license to sign the voter registration application may be used only for voter registration purposes.

The bill lists conditions under which the State Election Commission may remove the name of a registered voter from the official list of eligible voters; requires the Commission to inform applicants for voter registration of voter eligibility requirements and penalties for submission of false voter registration applications. At least 90 days before a state primary or general election, the Commission must complete a program to systematically remove the names of ineligible voters from the official lists of eligible voters and must also furnish voter registration applications to these agencies. The Executive Director of the State Elections Commission would serve as the chief state election official responsible for implementing coordination of the state's responsibilities under the Federal Motor Voter Act and must maintain a master file, instead of a roster, of all registered voters by county and precinct.

Status: Pending on House Second Reading Statewide Contested Calendar. (Note: A similar measure, S. 1351, is pending in the House Judiciary Committee.)

Operations of Reinsurance Facility (H. 4972, Rep. Felder). This bill revises various operations of the State's Reinsurance Facility and requirements for writing physical damage coverage for private automobiles, as follows:

---Requires the insurance commissioner, after consultation with the governing board of the Reinsurance Facility, to direct the governing board of the Facility to contract with one or more of the insurers meeting eligibility requirements promulgated by the governing board (hereafter called "board") to act as servicing carriers for the writing of auto insurance through producers assigned to the servicing carrier by the board. The servicing carrier must cede the risk on every policy of auto insurance produced by its assigned servicing agents for the Reinsurance Facility.

---Allows, after June 1, 1994, producers previously designated by the insurance commissioner of the board to continue to serve in the capacity of a servicing agent for the Facility and provides that these producers are not required to requalify or reapply for assignment.

---Allows producers to apply to the board for assignment to a servicing carrier and to be eligible for assignment. Currently a producer is designated by the board upon application for designation. Deletes several provisions pertaining to designation of producers by the board and provides that an applicant for assignment by the Board must have been a licensed resident property and casualty insurance agent for 5, as currently opposed to 10, continuous years and must at the time of application be an agency owner or principal associated with an agency in South Carolina which has been actively in business for 5 years. Also provides that a producer assigned to a servicing carrier may not operate or maintain more than one location at which the solicitation or

transaction of any auto insurance business is conducted and may not change the location without written authorization of the board. Additionally, assignment of a producer to a servicing carrier by the board is transferable to a spouse, child, parent, brother or sister of the producer upon the producer's retirement, incapacity, or death.

---Provides that the board must not contract with an insurer to act as a servicing carrier solely for the insurer's own authorized and voluntary contracted agents. Also, upon change of assignment of a producer to another servicing carrier, the producer's former servicing carrier is not subject to current laws pertaining to restrictions on non-renewal of policies and notice of cancellation or refusal to renew policies, but only for existing policies of that producer which expire at the policy renewal dates beginning 120 days from receipt of notice of the change of assignment by the former carrier from the board. Also lists information the former servicing carrier must place on its notices to these policyholders.

---Provides that member companies of an affiliated group of auto insurers may utilize different filed rates for auto insurance coverages which they are mandated by law to write. Also provides that premiums ceded to the Facility at a company-filed rate which is greater than the facility rate must not be included when determining total direct cedeable written premiums for purposes of unreasonable or excessive use of the facility. Sets a three-year period for phasing in establishment of a facility rate for all business ceded to the Facility.

---Provides that an insurer is <u>not</u> required to write private passenger physical damage coverage for the following vehicles:

(1) classic cars (i.e., a car whose monetary value exceeds the original purchase price which has appreciated in value by maintaining the original parts;

(2) antique cars (i.e., car over 25 years of age);

(3) any car with a modification to the chassis or wheel base;

(4) any car with a wheel base of 99.5 inches or less, including utility vehicles;

(5) any car within the "Sports Group" or "Sports Premium Group." (For these purposes, a "Sports Group" car is a two-passenger body type auto with a net weight to horsepower ratio between 20:1 and 30:1. "Sports Premium Group" means a two-passenger body type vehicle with a net weight to horsepower ratio between 20:1 or less.)

Insurers subject to these provisions who write single interest coverage must provide an applicant for the insurance a notice which states that the insurance coverage being purchased is only single interest collision coverage and that the amount of this insurance decreases as the amount of indebtedness is paid off. The notice also must state that under this coverage, no insurance proceeds over and above the amount of the outstanding balance of the loan may be received.

---Provides that a policy of auto insurance offered or issued by a new servicing carrier for the Reinsurance Facility to replace a policy previously issued by a former servicing carrier and containing the same coverage limits as the former policy constitutes a valid replacement policy which does not require the new servicing carrier or agent to make a new offer of coverage or to obtain a new application from the insured.

Status: Pending on the House Statewide Second Reading Uncontested Calendar.

Establishment of Joint Legislative Committee to Study Higher Education (H. 4986, Rep. Townsend). This concurrent resolution establishes a joint legislative committee to study the governance, operation and structure of higher education in South Carolina. This committee would consist of 4 House members and 4 senators, with the House members appointed by the Speaker and the senators appointed by the Senate President Pro Tempore. In taking a comprehensive look at the governing structure of higher education, the committee is to examine national trends and reform efforts in higher education and examine the lines of authority and the relationship between the boards of trustees of state higher education institutions and the Commission on Higher Education. While investigating how higher education opportunities are currently provided to South Carolina students, the committee is to examine the structures of higher education institutions at all levels, studying issues such as the degree of emphasis on research, teaching and service and the effects of priorities set forth by colleges and universities.

The committee must conclude its work and issue its final report by June 1, 1995. The committee's final report is to be submitted to the House Education and Public Works and Senate Education Committees at which time the committee is dissolved.

Status: Pending on the House Uncontested Calendar.

Martin Luther King's Birthday a Required State Holiday (S. 464, Sen. Glover). This bill would make Dr. Martin Luther King's birthday a required state holiday, to be observed the third Monday in January. The bill also deletes a provision allowing the governor to declare Christmas Eve each year a holiday for state government employees but adds this date to a list of non-national holidays, one of which a state employee may select as a day off during a year.

Status: Pending on House Second Reading Statewide Contested Calendar.

Workers' Compensation Insurance Reform (S. 540, Sen. Saleeby). This bill reforms various aspects of the state's workers' compensation insurance system. Among other things, the bill provides that work-related

stress is not a compensable injury unless it is supported by clear and convincing psychiatric evidence that the predominant cause of injury was stressful conditions of employment that were unusual in comparison to pressures experienced by similar employees. For these purposes, work-related stress would not include stress resulting from personnel actions (e.g., demotions, terminations, etc.) The bill also allows an employer to "opt out" of the Workers' Compensation System (i.e., operate outside this system), provided that the employer purchases insurance coverage meeting certain statutory requirements or posts $500,000 surety bond or security with the Chief Insurance Commissioner. In this case, the employer must obtain coverage from a licensed and admitted carrier participating in the Guarantee Association Fund or from a carrier authorized to do business in South Carolina by the Department of Insurance. The bill also provides that if an owner-operator of a commercial vehicle enters into a contractual relationship with a motor carrier as an independent contractor, then, under certain conditions, the contractor is not to be considered an employee for purposes of the state's workers' compensation law, determined by clearly defining when an independent contractor is not considered to be an employee. As part of their agreement, the owner-operator and motor carrier can mutually agree that the owner-operator and his drivers will be covered under the motor carrier's workers' compensation coverage or self insurance if the owner-operator pays the premiums requested by the motor carrier.

The bill also incorporates a "start payment" provision that would apply only to those operating within the Workers' Compensation System and not to those who decide to opt out. An employer may start temporary total disability (TTD) payments immediately when an employee is out of work eight consecutive days and may continue these payments for up to 120 days without waiver of any grounds the employer may have for denying the claim discovered in a good faith investigation. An employer may terminate or suspend TTD payments immediately if the employee returns to work; the employee agrees he is able to return to work on proper documentation; a good faith investigation, during that 120-day period, reveals grounds for denial of the claim; or the employee has been released by the treating physician to return to work or limited duty---but the injured employee refuses to return to work. The bill also allows an employee to request a hearing to have temporary compensation reinstituted after termination and provides that carriers or employers which do not comply with these "start payment" provisions may be assessed a penalty of not more than 25 percent of benefits withheld, with the penalty payable to the employee.

The bill also establishes the Omnibus Insurance Fraud and Reporting Immunity Act (also incorporated in H. 3977 and as a permanent proviso in the 1994-1995 general appropriation bill), which creates an insurance fraud division within the attorney general's office to prosecute insurance fraud, refer matters for investigation to the State Law Enforcement Division and collect fines. Immunity is granted to "whistle blowers" with immunity from civil or criminal liability granted to persons, insurers and others who furnish information and cooperate with these investigations.

The term "insurance fraud" is amended to include "false statement and misrepresentation"--i.e., it would be an act of fraud to make a statement or misrepresentation for purposes of obtaining or denying or causing another to obtain benefits or payments in connection with an insurance transaction, applying not only to workers' compensation transactions but also any insurance transactions. The bill provides both criminal and civil penalties for making false statements or representations for these purposes, with the offense being a misdemeanor (punishable by maximum fine of $500 or imprisonment not exceeding 30 days) for a first time conviction if the value of the benefit is under $1,000. The offense is a felony, however (punishable by fine not exceeding $50,000, or imprisonment not exceeding 5 years, or both) if the value of the benefit is $1,000 or more or upon conviction for a second or subsequent offense, regardless of the benefit amount. A person convicted of violating these insurance fraud provisions must be subject to a civil penalty for each violation, with the penalty being a maximum of $5,000 for a first offense; between $5,000 and $10,000 for a second offense; and between $10,000 and $15,000 for a third and subsequent offense. The civil penalty is to paid to the director of the insurance fraud division to be used to provide funds for costs of enforcing and administering these provisions. The division director and person alleged to be guilty of violating these provisions may enter into a written agreement, in which the person does not admit or deny the charges but consents to payment of the civil penalty.

Status: Pending on House Statewide Second Reading Contested Calendar.

(4) Legislation Still in House Committees (as of Monday, May 16)

Listed below are bills still remaining in House committees.

Flying of Confederate Flag atop State House (H. 4225, Rep. Richardson; H. 4408, Rep. Wofford; H. 4533, Rep. J. Brown; H. 4623, Rep. Cromer).

H. 4225 is a joint resolution which would establish a site for a permanent Confederate war memorial on the grounds of the State house, to include the Confederate battle flag. This resolution also specifies that the Confederate battle flag would be flown atop the State House only on Veterans' Day, Memorial Day and significant dates in Civil War history (e.g., South Carolina's secession from the Union, the start of the war, etc.).

H. 4408 requires a statewide referendum to be held this November to determine whether a Confederate flag should be flown atop the State House, and, if a flag should be flown, whether that flag should be the Confederate battle flag or the Confederate "stars and bars" flag. If a majority of voters is in favor of flying a Confederate flag, then the flag receiving the highest number of votes must be flown atop the State House. (Currently, and since 1962, the Confederate battle flag flies on the top of the State House.)

H. 4533 is a concurrent resolution in which the General Assembly declaring that the Confederate flag be removed from atop the State House and expresses opposition to flying that flag on any public property except that property dedicated exclusively to the function of a war memorial or museum.

H. 4623 also requires a statewide referendum to be held this November to determine if the Confederate battle flag should be flown atop the State House. If a majority of those voting is against continued flying of the flag, then the flag may not be flown atop the State House after January 1, 1995. This joint resolution also prohibits any other flag of the Confederacy from being flown atop the State House without the authorization of the General Assembly by act or joint resolution.

Status: H. 4225 pending in the House Invitations and Memorial Resolutions Committee; H. 4408, H. 4533 and H. 4623 are pending in the House Judiciary Committee.

Homestead Exemption from School Operating Taxes (H. 4633, Rep. Boan). This bill would exempt residences from payment of property taxes for school operating purposes, phased in so that the value of a homestead exempt from these taxes is $5,400 in property tax year 1994; $21,000 in 1995, $54,000 in 1996 and 100 percent of fair market value after property tax year 1996. The exemption would not apply, however, to school taxes levied for debt service, payments for lease-purchases, or additional school taxes for operating purposes levied for property tax years beginning after 1997. Additionally, the exemption would be contingent on an appropriation by the General Assembly each year reimbursing school districts by an amount equal to the Department of Revenue and Taxation's estimate of total school tax revenue resulting from the exemption in the next fiscal year. If the appropriation for a year is less than the certified estimate, then the Department must calculate a proportional reduction in the exemption amount otherwise applicable to eliminate any loss of revenue to school districts. The Comptroller General, from the State's general fund, annually must pay to the treasurer of each county for the account of each school district in the county a sum equal to taxes not collected for the school district because of the exemption.

Beginning in Fiscal Year 1995-1996, the bill would limit increases in total spending by county and municipal governments, along with county special tax districts, special purpose districts and public service districts, to the rate of inflation. This spending limit, however, would not apply in certain situations (e.g., offset a prior year's deficit, debt service, etc.). Additionally, total revenues of a school district from property taxes levied for operating purposes for a school year may not exceed the total of these revenues in the prior school year by more than the Education Finance Act inflation factor, except in limited circumstances such as revenues for debt service or to offset a prior year deficit.

Status: Recommitted to the House Ways and Means Committee. (Note: While the bill was recommitted to committee, the House, in its version of the 1994-1995 general appropriation act, included the first - year exemption phase-in, amounting to approximately $17 million; the Senate, however, removed this tax relief from its version of the budget.)

South Carolina Higher Education Coordinating Council (H. 4636, Rep. Sharpe). This bill is an effort to restructure the state's system of higher education, to allocate the state's available funds for higher education in a more efficient and accountable manner. The bill creates a Coordinating Council for Higher Education, which would be responsible for

coordinating the missions of public institutions of higher learning, eliminating duplication, proposing budgetary matters to the governor for the Executive Budget, and streamlining the governance of institutions of higher learning. Any functions, duties and responsibilities of the current Commission on Higher Education which overlap with this Council would be transferred to the Council on July 1, 1994.

The Council would consist of 10 members, all of whom except the chairman would serve ex-officio. One member must be at member at-large appointed by the governor, and this member must serve as chairman. One member must be the chairman of the State Board for Technical and Comprehensive Education, and two members must be members of the governing body of a local area technical education institution chosen by the State Board for Technical and Comprehensive Education. Three members must be the chairman or a board member designated by the chairman of the respective governing bodies of the state's three public senior research institutions of higher learning, and three members must be the chairman or a board member designated by the chairman of the state's 7 other 4-year public institutions of higher learning, with these three members selected by the chairman of these boards who must designate by majority vote which of the 7 institutions would have a representative on the council. The terms of the members representing 4-year public institutions are 4 years, while the chairman's term is co-terminous with the governor.

The bill requires the governor to appoint an executive director for the council upon the council's recommendation, with funding for the necessary technical, administrative, clerical and other expenses of the council to be included in the annual general appropriations act as part of the appropriation to the governor's office.

All public institutions of higher learning would be required to submit summary budgets to the council, while the State Board for Technical and Comprehensive Education would be required to submit a summary budget representing the total request of all area-wide technical and comprehensive educational institutions. The bill lists information to be included in these summary budgets and requires the council, after review of these budgets, to submit them, with the council's recommendations, to the governor. In preparing his executive budget for submission to the General Assembly, the governor must consider the summary budget of each public institution of higher learning and the council's accompanying recommendation.

Status: Pending in the House Education and Public Works Committee.

South Carolina Criminal Justice Reform Act of 1994 (H. 5013, Rep. Clyborne). This bill seeks to revise several aspects of the state's criminal justice system, in the areas of criminal law reform, juvenile justice reform and appellate reform. A summary of highlights of this bill is listed immediately below, but in general the bill seeks to stiffen

requirements for release of prisoners and require longer sentences for certain offenses; require the Department of Juvenile Justice to establish a self-contained residential shock program for juveniles adjudicated delinquent and committed to that department; and limit the filing period for post-conviction relief.

In the area of criminal law reform, the bill, among other things, prohibits a person convicted of a state offense and sentenced to custody of the Department of Corrections from being eligible for work release unless the prisoner has served (a) at least 60 percent of his sentence (if convicted of a violent offense) or (b) at least 50 percent of his sentence (if convicted of a non-violent offense). Furthermore, the prisoner is not eligible for early release or discharge (such as extended work release or community supervision) unless he has served 90 percent of his sentence (for a violent offense) or 80 percent of his sentence (for a non-violent offense). The bill also expands the definition of "violent crime" to include, among other additions, trafficking in ice, crank and crack cocaine and criminal sexual conduct with minors in the first or second degree. Also established are categories of "most serious offense" (e.g., violent crimes and certain other felonies) and "serious offense", for sentencing purposes. A person convicted of a "most serious offense" a second time must be sentenced to life imprisonment, eligible for parole only after 30 years' service, while a person convicted a fifth or subsequent time of a "serious offense" must be sentenced to life and is ineligible for parole until 20 years' service.

Also in this area, county governing bodies are required to put prisoners under their jurisdiction to work in litter control functions and also must utilize county work gangs. Any person convicted, or juvenile adjudicated, for a crime involving sexual assault, sexual battery, prostitution, buggery or committing a lewd act on a child under age 14 must be tested for the HIV virus if the victim makes this request to the solicitor. Test results which indicate the offender is infected with the HIV virus must be reported to the Departments of Corrections and Juvenile Justice, with this information used solely for provision of medical treatment for an offender confined within those facilities.

In addressing juvenile justice reform, the bill requires the Department of Juvenile Justice (DJJ) to establish a self-contained residential shock program for juveniles adjudicated delinquent and committed to DJJ. Priority for transfer into this 60-day program is to be given to juveniles adjudicated delinquent for nonviolent criminal acts occurring in or around school property. Any juvenile who successfully completes this program must be granted a conditional release from their commitment to DJJ, while any juvenile who does not successfully finish the program must be transferred to a secure correctional facility. The bill also gives the circuit court concurrent jurisdiction with the family court for trials of persons age 16 or older charged with a felony which carried a maximum sentence of at least 15 years; provides for release of a juvenile's record for any crime committed and lists provisions for the

appropriate level of custody and supervision for juveniles adjudicated delinquent.

Status: Pending in the House Judiciary Committee.

Property Tax Relief Sales Tax Act (H. 5023, Rep. Sturkie). This bill would raise the state sales and use tax from the current rate of 5 percent to 8.5 percent, using increased revenue from this tax to abolish property taxes. Under these provisions, beginning July of 1995, the first $2.1 billion of revenue raised by this tax in a fiscal year must be credited to a separate fund in the State Treasury entitled the Property Tax Relief Fund. Revenues credited to the fund mst be adjusted according to the percentage increase in the consumer price index beginning in fiscal year 1997. Proceeds from this Fund first must be used to pay current interest and principal on general obligation bonds and lease payments on certificates of participation in lease-purchase agreements of all counties, municipalities, school districts, and special purpose or public service districts outstanding as of July 1, 1995. Once deductions from the Fund have been made to pay for those general obligation bonds and lease payments, remaining Fund revenues must be distributed quarterly to school districts, counties and municipalities based on a formula as provided in the bill. Funds remaining in the Fund in any year after the required distributions to counties and municipalities and other required distributions must be deposited to the credit of the Education Improvement Act of 1984 Fund.

The bill requires the millage rate imposed by a locality (e.g, county, municipality, school district, etc.) for property tax 1995 to be reduced 50 percent from the millage rate imposed the previous year. After 1995, and until all outstanding general obligation bonds issued by a taxing entity are paid, no taxing entity may impose a property tax except to avoid default on its general obligation bonds. Once a taxing entity's outstanding general obligation bonds are repaid, no locality (e.g., county, municipality, etc.) may levy a property tax, and the office of county assessor and delinquent tax collector is abolished.

The bill also deletes the current maximum $300 sales tax cap and the sale or lease of motor vehicles, motorcycles, boats, recreational vehicles, self-propelled light construction equipment, musical instruments and machinery used for research or development purposes and instead places a 4.5 percent sales tax rate on these items. The bill adds a $300 sales tax cap for commercial vehicles with a manufacturer's gross weight rating in excess of 10,000 pounds.

Status: Pending in the House Ways and Means Committee.

Community Corrections Incentive Act (H. 5057, House Judiciary Committee). This bill addresses the state's sentencing policies,

eliminating parole and implementing "truth in sentencing," and enacting other provisions pertaining to inmates.

Identifying a need for additional local correctional facilities to enable nonviolent offenders to reside in less costly community correctional facilities, the bill requires the South Carolina Sentencing and Corrections Policy Commission to create a plan whereby the state can establish a partnership with local governments to meet the corrections and incarceration needs of both state and local governments, by offering less costly facilities for housing both state and local inmates in alternative sentencing programs.

As pertains to wage garnishment and other remedies for default of payment of fines, costs and penalties, the bill allows wage garnishment, in cases where the defendant has not attempted to pay but is able to do so, by permitting the court to order a defendant's employer to withhold and pay over to the clerk of court amounts necessary to comply with the order of payments plus other expenses and costs. Additionally, the clerk of court must submit to the chief administrative judge and to the Department of Probation, Pardons and Parole quarterly reports of fines, costs, forfeitures and penalties imposed in his court which remain unpaid, and the Department must institute proceedings for the collection and satisfaction of these fines, etc. If a defendant is unable to make immediate payment of a fine, restitution, etc., then the court may order payments in installments. The solicitor or court may hold a hearing requiring a defendant to show cause for defaulting on these payments. If a defendant defaults without good cause, the court may order civil judgment, suspension of driver's license or other actions.

The bill provides for a 1-year statute of limitations for initiating post conviction relief proceedings and establishes a statewide pretrial classification program to improve the system of release of persons on bond. The governing bodies of two or more counties or municipalities may join in establishing detention facilities to confine persons and may requires persons committed to those facilities to be usefully employed (unless disqualified because of sickness or other reasons). Additionally, the director of the Department of Corrections may establish a program involving use of inmate labor in private industry and enter into contracts with private companies; articles, products or services produced pursuant to contracts under these provisions are exempt from current prohibitions against the sale of products produced by inmates.

The bill also allows for establishment of criteria for a "reasonable deduction" from money credited to an inmate's account (regardless of whether the inmate is detained in a municipal or county jail or state correctional facility) to repay costs of public property wilfully damaged or destroyed by him during incarceration; medical treatment for injuries inflicted by the inmate upon himself or others; searching for and apprehending the inmate when he escapes or attempts to escape, or quelling a riot or other disturbance in which the inmate is unlawfully involved.

(This provision is similar to H. 3999, currently on the House contested calendar, and to a permanent proviso adopted last month by the House in the 1994-1995 general appropriation act.) The Department of Corrections is required to obtain information from prisoners regarding their assets, with this information, along with an estimate of the total cost of care for the prisoner, forwarded to the attorney general, who in turn may seek reimbursement if he has good cause to believe that the assets are sufficient to recover at least 10 percent of the cost of caring for the prisoner. The bill also establishes the South Carolina Sentencing and Corrections Policy Commission, replacing the current Sentencing Guidelines Commission, to develop comprehensive plans in the area of corrections policy.

The bill also contains a number of provisions pertaining to "truth in sentencing," as follows:

---Requires a prisoner in the Department of Corrections convicted of a violent crime to serve 70 percent of his sentence before being eligible for work release, while a prisoner convicted of a nonviolent crime must serve 60 percent of his sentence before eligibility for work release. Furthermore, a prisoner in the Department of Corrections is ineligible for early release unless he has served 80 percent of his sentence (if convicted of a violent crime) or 70 percent of his sentence (if convicted of a non-violent crime).

---Abolishes parole and implements truth in sentencing for purposes of sentencing criminals. Under current law, prisoners may serve less time than that to which they are sentenced because of parole. Under these provisions, however, persons sentenced for crimes are to serve the full time for which they are sentenced. Persons sentenced up to life for crimes (e.g., murder, lynching, homicide by child abuse, etc.) must serve a term for life, with life imprisonment thus meaning until the prisoner dies.

---Requires a person convicted of armed robbery to serve a mandatory minimum sentence of 10 years.

---Requires a person who has two convictions for a violent crime, regardless of whether he is considered a violent offender, to be punished upon a third conviction for a violent crime for a term of imprisonment up to life (again, with "life imprisonment" interpreted literally---i.e., imprisonment until death).

---Limits the ability of the director of the Department of Corrections to allow a prisoner to temporarily leave prison by deleting provisions authorizing him to allow a prisoner to leave temporarily for activities such as contacting prospective employers or visiting or attending the funeral of a spouse, child or parent. Instead, under these provisions, temporary release may be granted only for the prisoner to obtain medical services not otherwise available.

---Allows counties or municipalities to arrange with other counties or municipalities or a local regional correctional facility for the detention of its prisoners. Requires the Department of Corrections to notify the solicitor, sheriff, judge and registered victims before releasing inmates on work release, with the Department permitted to deny participation based on the opinions received.

Status: Committed to the House Ways and Means Committee on April 27.

School Bond Property Tax Relief Act (H. 5088, Rep. McCraw). This bill allows a school district to enact a 1 percent sales and use tax within its jurisdiction to pay debt service on general obligation bonds issued for school improvements (e.g., school construction, renovations, etc.), with money from this tax used to reduce property taxes which fund debt service. To enact the tax, the governing body of a school district first must pass a resolution, specifying the improvements to be financed through issuance of general obligation bonds of the school district, together with the imposition of the tax; the maximum time (not exceeding 20 years) during which the tax may be imposed; and the maximum principal amount of general obligation bonds to be issued and repaid with these tax proceeds. A referendum then must be conducted on the question of imposing the optional sales and use tax in the district. If a majority of those voting are in favor of the tax, then the tax is imposed beginning the first day of the third full month following the filing by the election commission of the declaration of results of the referendum with the Department of Revenue and Taxation. A referendum to impose this tax may not be held more than once in a 12-month period. The tax terminates on the final day of the maximum time specified for the imposition, or, if earlier, but not if later, upon payment of the final maturing installments of the bonds to which application of the tax is authorized, or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds.

This extra 1 percent tax would not apply to the sale of items subject to a sales tax cap (e.g., motor vehicles, boats, etc.), nor to sale of food which may be purchased lawfully with United States Department of Agriculture food stamps. Revenues from this tax are remitted to the State Treasurer and credited to a fund separate and distinct from the State's general fund. The State Treasurer must distribute the revenues from this tax on a quarterly basis to the county treasurer holding the debt service bonds established for payment of principal and interest on the bonds to which this tax is applicable. The county auditor must reduce the next levy of property taxes required to pay debt service on bonds to which the 1 percent tax is applicable by the amount of tax revenues collected as of June 30 by the county treasurer. Taxes collected as of June 30 in a calendar year in excess of amounts required to pay debt service due in the 18 months following the June 30 on bonds to which the tax is applicable must be applied to reduce the next levy of property

taxes required for payment of the school district's operational and maintenance costs.

Status: Pending in the House Ways and Means Committee.

Reorganization of Higher Education Commission (S. 1366, Senate Education Committee). This bill changes the composition of the State's Commission on Higher Education. Under these provisions, the Commission size would be reduced from 18 to 11 members, all appointed by the governor, of whom one would be an at-large member (serving as chairman), six would represent congressional districts (one from each district), three would be representatives of public colleges and universities and one would be a representative of the state's independent colleges and universities.

The governor's appointments of members representing congressional districts also require the advice and consent of the Senate. Members representing these districts must have experience in business, the education of future leaders and teachers, management or policy, and must not have been, in the five years preceding appointment, a member of a governing body of a public institution of higher learning in South Carolina. Furthermore, members representing these districts must not be employed or have immediate family members employed by any of the State's public colleges or universities. These members would serve staggered four-year terms and could not serve more than two consecutive terms. The three members representing public colleges and universities would serve ex-officio, with one of those members required to be serving on the board of trustees of the state's public senior research institutions (MUSC, USC-Columbia, Clemson); one member must be serving on the board of trustees of the state's other four-year institutions of higher learning; and one member must be a member of a local area technical education commission or the State Board for Technical and Comprehensive Education. These members would serve two-year terms. The member representing independent colleges and universities also must be a member of the Advisory Council of Private College Presidents and may serve a maximum of two consecutive two-year terms.

The Commission must make recommendations concerning policies and other matters of state-supported institutions of higher learning to the governor's office and the General Assembly, instead of to the Budget and Control Board and the General Assembly, and allows the House Ways and Means Committees and Senate Finance Committees, in addition to the Budget and Control Board, to refer to the Commission for investigation, study and report requests of institutions for higher learning for new or additional appropriations. The bill also requires the executive director to be appointed by the Commission to manage and carry out the Commission's duties, and the executive director may be dismissed without cause. Furthermore, the executive director, instead of the Commission, may establish a professional staff compliment (i.e., assurance that staff of

the Commission have the professional competence and experience to carry out their duties.)

Status: Pending in the House Education and Public Works Committee. (NOTE: An amendment including the provisions of S. 1366 was adopted by the Senate last week in its version of the 1994-1995 General Appropriation Act.)

Total copies 550
Total cost $ 775.50
Cost per copy $ 1.41
Date 5-17-94
S. C. Legislative Council